In the Supreme Court of the

United States

OCTOBER TERM, 1972

NO. 72–1465

RAYMOND K. PROCUNIER, Director, California Department of Corrections, et al,

Appellants,

vs.

ROBERT MARTINEZ, et al,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

APPEAL DOCKETED April 28, 1973

PROBABLE JURISDICTION NOTED June 18, 1973.

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Filed: U.S.
District Court,
Northern District
of California
July 6, 1972.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ, and WAYNE EARLEY, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

RAYMOND K. PROCUNIER, Director of the California Department of Corrections, and LOUIS S. NELSON, Warden, San Quentin Prison,

Defendants.

No. C-71 543 ACW

AMENDED COMPLAINT

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1343(3), 1343(4), 2201 and 2281. This is a suit authorized by 42 U.S.C. Section 1983 to redress the deprivation under color of state law of rights, privileges and immunities secured by the First and Sixth Amendments and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. This is also a proceeding for a declaratory judgment as to plaintiffs' constitutional rights to be free from such deprivation by state prison officials.

PARTIES

2. Plaintiff ROBERT MARTINEX is a citizen of the United States and a resident of the State of California. He is imprisoned under a judgement of conviction rendered by a Superior Court of the State of California. He is now being held in the California Mens Colony-East at San Luis Obispo, under the jurisdiction of the California Department of Corrections. At the time this action was filed he was incarcerated in San Quentin Prison where this cause of action arose.

3. Plaintiff WAYNE EARLEY is a citizen of the United States and a resident of the State of California. He is imprisoned under a conviction of a Superior Court of the State of California. He is now being held in San Quentin Prison, under the jurisdiction of the California Department of Corrections.

4. Defendant RAYMOND K. PROCUNIER is Director of the California Department of Corrections, (hereinafter, CDC), and as the chief administrator thereof is responsible for its general management and control. Under California Penal Code Section 5058 he is empowered to prescribe rules and regulations for the administration of the prisons and to change them at his pleasure. Exercising such power he promulgated the Rules complained of herein. He is sued individually and in his official capacity as Director.

5. Defendant LOUIS S. NELSON is Warden of San Quentin Prison. He is responsible for the promulgation of rules and policies implementing the Director's Rules, as well as those matters not specifically covered by the Director's Rules. He supervises and manages San Quentin Prison. He is sued individually and in his official capacity as Warden.

CLASS ACTION

6. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all inmates of the California Department of Corrections affected by the policies, practices or acts of defendants complained of herein. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims and defenses of plaintiffs are typical of the claims and defenses of the class; plaintiffs will fairly and adequately protect the interests of the class. Defendants have acted on grounds

generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

COUNT I

7. Members of the plaintiff class who want to communicate by mail are required to submit all letters to prison officials who censor them to determine whether they conform to a variety of broad and general regulations promulgated by defendant PROCUNIER. The applicable regulations include Rule 2402 (8), that prohibits inter alia, letters that "are lewd, obscene or defamatory; contain prison gossip or discussion of other inmates; or are otherwise inappropriate." Plaintiffs' letters must also conform to Director's Rule 1201, Inmate Behavior, which directs them not to "agitate, unduly complain, magnify grievances, or behave in any way which might lead to violence"; and Director's Rule 1205(d) and (f) which define as "contraband" "any writings . . .expressing inflammatory political, racial, religious, or other views or beliefs. . . . which if circulated among other inmates, would in the judgment of the warden or superintendent tend to subvert prison order or discipline. . ."

8. No criteria or standards are furnished to the mailroom staff to guide them in deciding whether a particular writing violates any prison rule or unpublished policy. The vague rules are applied in an arbitrary, unpredictable, and discriminatory way that suppresses legitimate expression. Letters written by the named plaintiffs and by members

of the class have been treated as improper correspondence because they criticized prison officials, complained of mistreatment of themselves or others, or expressed unpopular political, religious or racial opinions.

9. Plaintiffs are given no hearing on whether or why their letters should be deemed impermissible and there is no appeal from the ex parte decision on this made by the mailroom personnel.

10. When the mailroom staff decides that a prisoner's letter constitutes "improper correspondence", they are authorized by defendants to take the following actions, alone or in combination: (1) refuse to mail the letter and return it to the prisoner; (2) submit a disciplinary report which may lead to suspension of the prisoner's mail privileges as specifically authorized by Director's Rule D2401, or to more severe punishment including solitary confinement; (3) photocopy the letter and place it or a summary of its contents in the inmate's permanent file. Even letters which are not held to violate any rule may be photocopied and placed in the inmate's file when the mailroom staff believes that they reveal a "bad attitude" toward the prison staff or society or express political views of which the staff disapproves. On information and belief letters placed in this file are referred to the prison classification committee which determines the inmate's housing and work assignments, and to the Adult Authority which rules on prisoners' parole eligibility. Director's Rule 1205 (f) (Administrative Bulletin No. 71/26, June 14, 1971)

specifically authorizes the retention of "contraband" writings for referral to the Adult Authority. (Plaintiffs' Exhibits A through F attached hereto illustrate the operation and effect of the CDC mail rules challenged herein.)

11. On information and belief, plaintiffs MARTINEZ and other members of the class have received unfavorable treatment from prison officials and the Adult Authority because of their disapproval of opinions and attitudes revealed in plaintiffs' letters.

12. Members of the plaintiff class cannot predict when their letters may be deemed to violate prison rules. In order to avoid punishment for violation they are forced to omit all but the most innocuous expression from their letters to their friends and families. Fear of punishment or adverse treatment discourages them from freely expressing their true thoughts and feelings. The threat of unpredictable punishment severely restricts plaintiffs' freedom to communicate by mail with their friends and families.

13. The censorship carried out pursuant to defendants' Rules is not limited to the narrow purpose of discovering and preventing escapes, smuggling and other criminal activity. The broad censorship authorized by defendants and carried out by their agents does not serve any compelling state interest, but it does suppress legitimate expression. By promulgating and enforcing the Rules regarding use of the mail, defendants violate plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

COUNT II

14. The allegations of paragraphs 1 through 13 are repeated and realleged as though fully set forth herein.

15. The Rules promulgated by defendant PROCUNIER prohibit prisoners from writing to attorneys unless "the subject matter relates to a legal case, proceeding or matter involving the inmate" (Mail and Visiting Manual, Section MV-I-02). All letters to attorneys are read by mailroom staff to determine whether they are "legitimate legal mail" as defined above. (Id.). However, the mailroom guards have no legal training and they are not provided with any criteria to determine whether a letter is "legitimate legal mail." If they decide it is not, they refuse to mail it and return it to the prisoner. They may also file disciplinary reports charging prisoners with violating prison regulations, such as those summarized in paragraph 7 above, resulting in loss of mail privileges or other more severe punishment. In addition, a copy of the offending letter or a summary of its contents may be placed in the prisoner's file, and, on information and belief, may be relied upon by prison authorities or by the Adult Authority as the basis for unfavorable treatment of the inmate, including assignment to the segregation section of the prison or denial of parole.

16. Censorship of their correspondence with attorneys has obstructed the named plaintiffs and members of the plaintiff class in obtaining access to the courts. Most members

of the plaintiff class are indigent and unable to retain counsel to represent them in bringing their claims of constitutional deprivations before the courts. They are dependent upon the services of unpaid attorneys who are willing to represent them because of the apparent merit of their cases. In order to interest attorneys in representing them, it is necessary for them to write about their cases in great factual detail. In order for them to answer attorneys' requests for further information, it is often necessary for them to include information which might be viewed unfavorably by prison authorities. In seeking and receiving representation in cases concerned with prison conditions, it is necessary for prisoners to discuss and describe the actions of prison personnel. They are extremely restricted in communicating all such information by the fact that their correspondence is read by prison personnel.

17. Even when members of the plaintiff class are represented by attorneys, time, distance and expense make correspondence an essential means of consultation. Plaintiffs' ability to be candid with their attorneys is severely hampered by the knowledge that their letters are read by prison personnel, and their attorneys are thereby hindered in affording them effective representation.

18. Censorship of correspondence between plaintiffs and their attorneys deprives them of the benefits of the attorney-client privilege created by California law and

enjoyed by all California citizens who are not incarcerated.

19. Many members of the plaintiff class are engaged in some stage of criminal proceedings, either on appeal, or by collateral attack, or as defendants in prosecutions based on conduct alleged to have occurred since their incarceration. Their correspondence with the attorneys representing them in their criminal proceedings is subject to the same scrutiny as all other prisoner correspondence with attorneys.

20. Defendants' Rules prohibiting confidential correspondence between plaintiffs and attorneys violates plaintiffs' right to petition for redress of grievances, their right of access to the courts, and their right to counsel, guaranteed by the First and Sixth Amendments and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

COUNT III

21. The allegations of paragraphs 1 through 6 and 15 through 20 are repeated and realleged as though fully set forth herein.

22. Rule MV-IV-02 of the Mail and Visiting Manual promulgated by defendant PROCUNIER permits prisoners to be interviewed in person by their attorney-of-record, or by his designated representative who must either be a member of the State Bar of an investigator licensed by the State. The rule prohibits interviews by para-professional assistants to attorneys.

23. Many members of the plaintiff class are indigent and unable to retain

counsel or paid investigators. Others are not totally indigent but have extremely limited financial resources. Defendants' refusal to permit them to consult with unlicensed investigators of good reputation who are supervised by members of the Bar severly handicaps prisoners seeking access to the courts.

24. Since filing this complaint plaintiff MARTINEZ has been transferred several times. Between January and June of 1972 he has been confined in institutions located in Chino, Fallbrook, Crestline and San Luis Obispo, California. Each of these institutions is several hundred miles from the offices of his attorneys in this action. His attorneys wanted to interview him to obtain information relevant to this case. In addition, they wanted to communicate their views about the merits of the case and the strategy to be followed, confidentially and without being subjected to monitoring by defendants or their agents. However, the time required for a round trip of this distance prevented plaintiff's attorneys from visiting him personally. Therefore they asked the CDC to permit their assistant, a third-year student at Hastings College of the Law, to interview plaintiff. Permission was denied on the basis of the CDC policy established by Rule MV-IV-02 of the Mail and Visiting Manual. As a result, plaintiff MARTINEZ and his attorneys have been unable to consult confidentially concerning this case, much delay has resulted from the need to consult by mail, and his attorneys have been handicapped in preparation of this case.

25. Plaintiff WAYNE EARLEY wrote to one of his attorneys herein, requesting legal assistance. His attorneys deemed a personal interview essential before they would agree to represent him, or could obtain the information needed to prepare this case. Because defendants refused to allow his attorneys' para-professional assistant to visit and interview plaintiff, a substantial delay occurred before a personal interview could be arranged, all supplementary consultation was necessarily carried on by mail, and his attorneys have been hampered in preparation of this case. (Plaintiffs' Exhibits G through L are copies of correspondence between one of their attorneys and the wardens of three different prisons, concerning visitation by her para-professional assistant.)

26. By promulgating and enforcing the Rule prohibiting prisoners from being interviewed by the para-professional assistants to attorneys from whom they seek or are receiving legal assistance defendants deprive plaintiffs and members of the class they represent of their right to effective assistance of counsel, and access to the courts, guaranteed by the First and Sixth Amendments and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

COUNT IV

27. The allegations of paragraphs 1 through 6 above are repeated and realleged as though fully set forth herein.

28. Director's Rule 2402(10), promulgated by defendant PROCUNIER and enforced by defendant NELSON prohibits prisoners from sending registered or certified mail, or any communication requesting a return receipt, without permission of the institutional head. There are no standards to guide the institutional head in deciding whether to grant permission. Prisoners encounter prolonged periods of delay waiting for permission to use such mail service, and have been denied permission arbitrarily and without any explanation, even when they had sufficient funds in their prison trust accounts to cover the charge for such mail service.

29. Prisoners' letters to courts, judges and public officials frequently go unanswered for considerable periods of time. Plaintiffs often experience considerable anxiety about whether their outgoing letters have been promptly forwarded by prison authorities and received by their addressees. Their concern about whether their letters had gone astray would be eliminated if they were permitted to send such letters by registered or certified mail requesting a return receipt.

30. There is no compelling state interest justifying defendants' Rule requiring inmates who have the funds needed to send letters by certified or registered mail to obtain special permission to do so. By promulgating and enforcing this Rule, defendants violate plaintiffs' rights under

the First, Sixth and Fourteenth Amendments to the United States Constitution.

COUNT V (Individual Claim)

31. The allegations of paragraphs 1, 2, 4 and 5 above are repeated and realleged as through fully set forth herein.

32. Director's Rule 2402(13), promulgated and enforced by defendants, prohibits prisoners from corresponding with inmates or former inmates of any institution without permission of the institutional head. The Rule contains no standards to guide the institutional head in deciding whether to grant permission. Acting under this Rule, prison officials have refused to grant plaintiff MARTINEZ permission to write to his co-defendant, Carolyn Hershelman, even though such correspondence is essential for him to obtain specific information needed to prepare a petition for writ of habeas corpus challenging his criminal conviction. Their refusal was arbitrary and unjustifiable. Any legitimate penal interest in restricting such correspondence would be adequately protected by censoring the mail to ensure that it was used solely for the authorized purpose. By prohibiting plaintiff from obtaining this essential information, defendants violated his right to due process and access to the courts, and to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

BASIS FOR EQUITABLE RELIEF

33. Plaintiffs and members of the plaintiff class on behalf of whom this suit

is brought have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a declaratory judgment and an injunction is their only means of securing adequate relief. Plaintiffs and members of the plaintiff class are now suffering and will continue to suffer irreparable injury from defendants' practices complained of herein.

34. WHEREFORE, plaintiffs respectfully pray that this Court enter judgment granting plaintiffs:

(a) a declaratory judgment that defendants' Rules, policies and practices complained of herein violate plaintiffs' rights and the rights of members of the plaintiff class secured by the First and Sixth Amendments and by the due process and equal protection clauses of the Fourteenth Amendment;

(b) an injunction prohibiting defendants, their agents and subordinates from refusing to mail, photocopying, placing in the inmate's file, or referring to the Adult Authority or to the prison classification committee any communications from plaintiffs that do not relate to criminal activity; further prohibiting them from penalizing plaintiffs in any way or depriving them of any privileges or benefits because of expression contained in their letters that does not relate to any criminal activity; further prohibiting them from enforcing and applying Director's Rule 1201 (Inmate Behavior), 1204 (Offensive Language), 1205 (contraband) or 2402(8) (mail topics) to any letters that do not relate to

criminal activity; and further requiring them to expunge from plaintiffs' files any reference to letters they have written in the past which are entitled to the protection of the First, Sixth or Fourteenth Amendments;

(c) an injunction prohibiting defendants, their agents and subordinates from reading, censoring, copying, withholding or delaying any communications between California Department of Corrections prisoners and attorneys;

(d) an injunction requiring defendants to permit members of the plaintiff class to be interviewed in person by para-professional assistants to attorneys from whom they have sought or are receiving legal assistance;

(e) an injunction prohibiting defendants from denying the use of registered or certified mail to any member of the plaintiff class who has the funds to cover the charge for such services, and further prohibiting defendants from enforcing Director's Rule 2402(10) which requires special permission for such mail;

(f) an order directing defendants to permit plaintiff ROBERT MARTINEZ to correspond with his co-defendant Carolyn Hershelman solely for the purpose of obtaining information needed to prepare a petition for writ of habeas corpus;

(g) plaintiffs' costs of this suit together with reasonable attorneys fees;

(i) such other and further relief as the Court may deem just and proper.

_____

ALICE DANIEL
Attorney for Plaintiffs

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, Director, California Department of Corrections, and LOUIS S. NELSON, Warden, San Quentin Prison, Defendants.	No. C-71-543 ACW

NOTICE OF MOTION AND MOTION TO DISMISS

TO: Plaintiffs ROBERT MARTINEZ and WAYNE EARLEY, and their attorneys of record WILLIAM BENNETT TURNER, NAACP Legal Defense and Educational Fund, Inc., 12 Geary Street, San Francisco, California 94108, and MARIO OBLEDO, Mexican American Legal Defense and Educational Fund, Inc., 145 Ninth Street, San Francisco, California 94102:

PLEASE TAKE NOTICE THAT on Friday September 29, at 9:30 a.m. or as soon thereafter as counsel may be heard, the undersigned will move in the courtroom of the Honorable Albert C. Wollenberg, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing this action on the ground that the complaint fails to state a claim against the defendants upon which relief can be granted.

This motion will be based on this Notice, the pleadings, records and files herein, and the Memorandum of Points and Authorities attached hereto.

DATED: September 8, 1972

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Filed: Sept. 13, 1972

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW (Three-Judge Court) REQUEST FOR ADMISSIONS

Plaintiffs hereby request, pursuant to Rule 36 of the Federal Rules of Civil Procedure, that defendants admit, for the purposes of this action, the truth of the following matters:

1. Prisoners confined in institutions under the jurisdiction of the California Department of Corrections who desire to communicate by mail are required to submit outgoing letters to prison officials who censor them to determine whether they conform to rules promulgated by defendant Procunier, including the following:

(a) Director's Rule 2402(8), prohibiting letters that "are lewd, obscene or defammatory; contain prison gossip or discussion of other inmates; or are otherwise inappropriate."

(b) Director's Rule 1201 (Inmate Behavior), forbidding inmates to "agitate, unduly complain, magnify grievances or behave in any way which might lead to violence."

(c) Director's Rule 1205(d) and (f), defining "contraband" as "any writings. . .expressing inflammatory political, racial, religious, or other views or beliefs. . .which if circulated among other inmates, would in the judgment of the warden or superintendent tend to subvert prison order or discipline." Letters may constitute contraband writings within this Rule.

2. Outgoing letters submitted for mailing by prisoners and incoming letters addressed to prisoners are read by the mailroom staff in the institution. No criteria or standards, other than those contained in the Director's Rules set forth in 1 above, are furnished to the mailroom staff to guide

them in deciding whether a particular letter violates any prison rule or policy.

3. Letters found objectionable by the mailroom staff may be rejected for mailing for any of the reasons listed in Exhibit A to the amended complaint filed herein.

4. Letters found objectionable by mailroom staff may also be rejected for mailing for other reasons as deemed appropriate by institutional personnel, and such reasons may then be noted in the blank spaces on Exhibit A to the amended complaint.

5. When the mailroom staff decides that a prisoner's letter constitutes improper correspondence, they are authorized by defendants to take the following actions, alone or in combination:

(a) refuse to mail the letter and return it to the prisoner;

(b) submit a disciplinary report which may lead to suspension of the prisoner's mail privileges as specifically authorized by Director's Rule D2401 or to more sever disciplinary punishment up to and including confinement in segregation;

(c) photocopy the letter and place it or a summary of its contents in the prisoner's permanent file.

6. Except in a case where a prisoner is charged with a disciplinary infraction as a result of writing a letter, a prisoner whose letter is rejected for mailing by mailroom staff is given no hearing or opportunity to be heard before an impartial tribunal to contest such rejection.

7. The mailroom staff may photocopy letters and place them in the inmate's file, even if the letters do not violate any rule, if they believe that the letters reveal an inappropriate attitude toward prison staff or society or express radical political views.

8. Letters placed in an inmate's file are referred to and consulted by the institution classification committee which determines the inmate's housing and work assignments.

9. Letters placed in a prisoner's file are made available to and consulted by the Adult Authority which rules on the prisoner's parole eligibility.

10. Director's Rule 1205(f) (Administrative Bulletin No. 71/26, June 14, 1971) authorizes the retention of "contraband" writings, which may include letters, for referral to the Adult Authority.

11. The Mail and Visiting Manual, Section MV-I-02, promulgated by defendant Procunier, prohibits prisoners from writing letters to attorneys unless "the subject matter relates to a legal case, proceeding or matter involving the inmate."

12. All prisoner letters to attorneys must be submitted to mailroom staff to determine whether they are "legitimate legal mail" as specified in the Mail and Visiting Manual.

13. All incoming letters from attorneys are subject to the same process as in 12 above.

14. Mailroom staff have no legal training and they are not provided with any standards or criteria for determining whether a

letter is or is not "legitimate legal mail."

15. If mailroom staff decide that a letter written by a prisoner to an attorney does not constitute proper legal correspondence, they may take the following actions, alone or in combination:

(a) refuse to mail the letter and return it to the prisoner;

(b) submit a disciplinary report which may lead to suspension of the prisoner's mail privileges as specifically authorized by Director's Rule D2401 or to more severe disciplinary punishment up to and including confinement in segregation;

(c) photocopy the letter and place it or a summary of its contents in the prisoner's permanent file.

16. Reading of mail to and from attorneys by prison personnel applies generally, including: (a) in cases where prisoners are engaged in some stage of criminal proceedings, either on appeal, on collateral attack or as defendants in prosecutions based on conduct alleged to have occurred during their incarceration; and (b) in cases like the present case, where prisoners sue prison officials alleging denial of their civil rights.

17. The Mail and Visiting Manual, Section MV-IV-02, promulgated by defendant Procunier, authorizes personal interviews of prisoners by their attorneys of record or the designated representative of an attorney of record. However, the designated representative

of an attorney must be either a member of the California Bar or an investigator licensed by the State of California. Interviews by paraprofessional assistants, law students or unlicensed investigators are prohibited.

18. A majority of the prisoners in custody under the jurisdiction of defendants are indigent and financially unable either to retain paid counsel or to hire paid licensed investigators.

19. In February and March, 1972, counsel for plaintiff Martinez requested permission for their assistant, a third-year law student at Hastings College of Law, to interview plaintiff Martinez, but permission was denied on the basis of the policy of the California Department of Corrections as set forth in the Mail and Visiting Manual, Section MV-IV-02.

20. Director's Rule 2402(10), promulgated by defendant Procunier and enforced by defendant Nelson, prohibits prisoners from sending registered or certified mail, or any communication requesting a return receipt, without permission of the institutional head. There are no standards or crieteria to guide the institutional head in deciding whether to grant or withhold permission.

21. Prisoners desiring to send registered or certified mail, or communications requesting return receipts, have been denied permission to do so even when they had sufficient funds in their prison trust accounts to cover the charges for such mail service.

22. Director's Rule 2402(13), promulgated by defendant Procunier and enforced

by defendant Nelson, prohibits prisoners from corresponding with inmates or former inmates of any institution without permission of the institutional head. There are no standards or criteria to guide the institutional head in deciding whether to grant or withhold permission.

23. Acting under Director's Rule 2402(13), defendant Procunier's subordinates have refused to grant plaintiff Martinez permission to write to his co-defendant Carolyn Hershelman, even though plaintiff asserted that such correspondence was needed to obtain information to prepare a petition for writ of habeas corpus challenging his criminal conviction.

24. Defendants admit the genuineness of the copy of the disciplinary report attached as Exhibit B to the amended complaint.

25. Defendants admit the genuineness of the copy of the letter attached as Exhibit C to the amended complaint. Such letter accurately states the policy of the California Department of Corrections of prohibiting inmates from writing material in letters "that is discriminatory or derogatory toward individuals or races."

26. Defendants admit the genuineness of the copy of the letter attached as Exhibit D to the amended complaint.

27. Defendants admit the genuineness of the copy of the letter attached as Exhibit E to the amended complaint.

28. The newspaper article attached as Exhibit F to the amended complaint accurately

states that a San Quentin inmate was charged in a disciplinary proceeding with violation of Director's Rule 1201, possessing and writing militant material, a letter.

29. Defendants admit the genuineness of the copies of the letters attached as Exhibits H, J and L to the amended complaint. Such letters acurately state the policy of the California Department of Corrections of not permitting interviews of inmates by law student assistants to attorneys.

30. All Director's Rules and sections of the Mail and Visiting Manual referred to herein apply on a state-wide basis to all institutions under the jurisdiction of the California Department of Corrections.

PLEASE TAKE NOTICE that the above matters are deemed admitted unless, within thirty days after service hereof, defendants serve upon the undersigned a written answer or objection complying with Rule 36(a) of the Federal Rules of Civil Procedure.

DATED: September 12, 1972

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW (Three-Judge Court) REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiffs hereby request, pursuant to Rule 34 of the Federal Rules of Civil Procedure, that defendants produce for inspection and copying the following documents:

1. The entire central files of plaintiffs Robert Martinez and Wayne Earley. (These files are to be produced in their entirety, as they existed on September 12, 1972, together with (a) all miscellaneous matter previously removed therefrom but which, on said date, was still in the possession, custody or control of defendants, and (b) all items inserted therein from said date through the actual date of inspection.)

2. The associate warden-custody files (the "AW" file) for plaintiffs Martinez and Earley.

3. Any and all files, notes, logs or other records disclosing the fact that prisoner letters deemed improper by institutional personnel have been rejected for mailing.

PLEASE TAKE NOTICE that such documents shall be produced for inspection and copying at 10:00 a.m. on October 17, 1972, at San Quentin State Prison.

DATED: September 12, 1972.

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Filed: Oct. 13, 1972

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al.,	Civil Action
Plaintiffs,	No. C-71 543 ACW (Three-Judge Court)
vs.	ANSWER TO REQUEST FOR ADMISSIONS
RAYMOND K. PROCUNIER, et al.,	
Defendants.	

Defendant R. K. Procunier hereby answers with respect to plaintiffs' request for admissions in the above-entitled case, which request was served on counsel for defendants on September 13, 1972, and states as follows:

Item 1: (Requests for admissions are attached).

Item 1 is true.

Item 2:

Item 2, if amended to the effect that the prisoners' letters may be read and that mail room staff or other employees are designated by the Warden may inspect the letters, is true.

Item 3:

It is my understanding that the Warden of the State Prison at San Quentin is responding to this item.

Item 4:

It is my understanding that the Warden of the State Prison at San Quentin is responding to this item.

Item 5:

Item 5 is true.

Item 6:

Item 6 is not true; there is an established appeal procedure whereby any inmate can air his complaint or grievance, including rejection for mailing by mail room staff. The appeal procedure usually involves review by individual upper level staff members and not by a panel or "tribunal".

Item 7:

Item 7 is true.

Item 8:

Item 8 is true.

Item 9:

Item 9 is partially true; the prisoner's file is available to the Adult Authority at the time of the prisoner's hearing. The Adult Authority members do not routinely review the file but may ask for and review the prisoner's file if they wish.

Item 10:

Item 10 is true.

Item 11:

Item 11 is true if such letters are designated as legal business mail by the prisoner.

Item 12:

It is my understanding that the Warden of the State Prison at San Quentin is responding to this item.

Item 13:

It is my understanding that the Warden of the State Prison at San Quentin is responding to this item.

Item 14:

Item 14 is true.

Item 15:

Item 15 is true except with respect to Section C which is not true.

Item 16:

Item 16 is not necessarily true in that inspection of such mail is not limited to inmates who are involved in specific types of litigations.

Item 17:

Item 17 is true except that with respect to the last sentence, such interviews by sub-professional assistants, etc., have been permitted when specifically ordered by the court.

Item 18:

I cannot respond to this item. We do not know the extent to which the prisoners under the custody of the Department of Corrections are indigent, and the research

necessary to provide an intelligent response to the question would require resources not readily available to the department. It is my impression that a great many of the inmates committed to the department are indigent.

Item 19:

I cannot respond to this item, not having the inmate file at my immediate disposal.

Item 20:

It is my understanding that the Warden of the State Prison at San Quentin will respond to this item.

Item 21:

It is my understanding that the Warden of the State Prison at San Quentin will respond to this item.

Item 22:

Item 22 is true.

Item 23:

I cannot respond to this item, not having the inmate file at my immediate disposal.

Items 24 through 29:

It is my understanding that the Warden of the State Prison at San Quentin will respond to these items.

Item 30:

Item 30 is true.

Dated: October 6, 1972.

R. K. PROCUNIER
Director of Corrections

THOMAS A. BRADY
Deputy Attorney General

EVELLE J. YOUNGER, Attorney General
of the State of California
EDWARD A. HINZ, JR., Chief Assistant
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Original filed
Oct. 27, 1972
Clerk,U.S.Dist.
Court,
San Francisco

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	No. C-71 543 ACW (Three-Judge Court)

ANSWERS OF DEFENDANT LOUIS S. NELSON TO PLAINTIFFS' INTERROGATORIES

Defendant Louis S. Nelson submits the following answers to the plaintiffs' interrogatories.

INTERROGATORY NO. 1:

State the total number of prisoners presently confined in institutions under the jurisdiction of the California Department of Corrections.

ANSWER TO NO. 1:

As of September 27, 1972, there were 19,196 prisoners confined in institutions under the jurisdiction of the California Department of Corrections.

INTERROGATORY NO. 2:

State the total number of prisoners presently confined at San Quentin State Prison.

ANSWER TO NO. 2:

As of September 27, 1972, 1,538 prisoners were confined at San Quentin State Prison.

INTERROGATORY NO. 3:

List the names of all persons presently serving, whether part-time or full-time, as mailroom staff or censors at San Quentin State Prison, and state in addition (a) any special qualifications such persons have for this position, including any special education or training, (b) the length of time such persons have been employed by the California Department of Corrections, and (c) the length of time such persons have been employed as mailroom staff or censors.

ANSWERS TO INTERROGATORY NO. 3

MAIL ROOM STAFF

J. J. Young	8-13-46	Officer
J. J. Murphy	7-1-48	Sergeant
L. A. Graxiola	1-20-51	Officer
R. E. Boyd	4-1-63	Officer
R. D. McKinney	6-19-61	Male Clerk
Mrs. D. Taylor	10-6-47	Female Clerk
Mrs. M. Ingram	7-17-61	Female Clerk

Persons assigned to the mail room are trained on the job to be able to recognize contraband items (money, etc.) and written material that could lead to violence (e.g. attacks on staff, riots, etc.) in accordance with Penal Code section 2600. There is no steadfast rule with rule with respect to length of service before assignment to the mail room. We do not keep assignment records after three years, but mailroom supervisor Sergeant J. J. Murphy states that most of our mailroom personnel have been there for a considerable length of time -- at least four years or more.

INTERROGATORY NO. 4:

State whether any letters (or copies or summaries thereof) to or from plaintiffs Martinez and Earley are included in their respective institutional files. If so, state in addition the following:

(a) the date of each such letter;

(b) the sender and the addressee of each such letter;

(c) the reason or reasons for placing each such letter in plaintiffs' file.

ANSWER TO INTERROGATORY NO. 4:

Nothing in inmate Earley's file indicates that any letters to or from him were placed in his institutional file as constituting improper correspondence.

INTERROGATORY NO. 5:

State whether defendants maintain, require to be maintained or are aware of any file, note, log or other record disclosing the fact that prisoner letters deemed improper by institutional personnel have been

rejected for mailing. If so, describe each such file, note, log or other record and its location in a manner suitable for use in a subpoena.

ANSWER TO INTERROGATORY NO. 5:

No such records are maintained. Letters rejected for mailing are returned to sender.

INTERROGATORY NO. 6:

State whether defendants are aware of any instances where any institutional head has refused (for any reason other than the inmate's lack of funds) to permit any inmate to send registered or certified mail, or any communication requesting a return receipt. If so, state in addition the name of the inmate involved and the reason or reasons for each such refusal.

ANSWER TO INTERROGATORY NO. 6:

I can recall no such instances since initiation of new institutional mail order (attached).

INTERROGATORY NO. 7:

State whether defendants have ever, while serving in their present capacities, permitted visits to inmates by attorneys' assistants who are neither members of the Bar nor investigators licensed by the State of California. If so, state in addition the following:

(a) during what period of time such visits were permitted;

(b) specific details, including dates and names of all persons involved, of any incident involving visits by such unlicensed assistants to attorneys that defendants deem to have created any danger to prison security.

ANSWER TO INTERROGATORY NO. 7

Visits to inmates by law students are permitted in accordance with San Quentin Institutional Order 403-A (attached) and also by court order. A photocopy of Plaintiff Earley's special purpose visiting card is attached.

INTERROGATORY NO. 8:

State whether defendants presently permit law students to visit prisoners in any circumstances. If so, state in addition: (a) in what circumstances, (b) subject to what conditions, and (c) what inquiry, if any, is made of such students' qualifications, background, character and security clearance.

ANSWER TO INTERROGATORY NO. 8:

All students must abide by institution order No. 403-A (attached).

DATED:

LOUIS S. NELSON
Defendant

Subcribed and sworn to before me
this 26th day of October, 1972

Notary Public

THOMAS A. BRADY
Attorney for Defendant Nelson

CALIFORNIA STATE PRISON
SAN QUENTIN

INSTITUTION ORDER NO. 403-A

SUBJECT: LAW SCHOOL STUDENT ASSISTANCE TO INMATES

I. OBJECTIVES OF COOPERATION WITH SCHOOLS OF LAW

A. To provide legal assistance to the maximum number of indigent inmates.

B. To broaden the experience of law students.

II. IMPLEMENTATION OF STUDENT LEGAL ASSISTANCE PROGRAMS

A. The administrative head of the law school will submit a written application indicating the nature of the proposed program and that it is an officially endorsed program of the school. Upon being furnished with a copy of this institution order, the administrative head will indicate in writing the school's agreement to adhere to the guidelines contained herein.

B. The San Quentin Administration reserves the right to reject, remove or suspend a student from participating in the program for inability to function in a mature manner, for violation of institutional rules or for becoming personally involved with inmates in matters unrelated to their legal problems.

III. GUIDELINES FOR PARTICIPATING LAW STUDENTS

A. The law school will designate a faculty member, preferably the dean or a department head, as having overall responsibility for the student program. The school may wish to designate a senior student as student director or coordinator of the program.

B. The law school will be fully responsible for the professional ethics and appropriateness of the students

legal activities. In addition to technical instruction and supervision, the school will instruct students as to their overall responsibilities and conduct. Students selected for the program must be mature and able to maintain professional objectivity.

C. The law schools participating in projects at San Quentin should maintain records of inmates counseled and coordinate their activities so that a particular inmate is not being counseled simultaneously or successively by several students. Duplication of effort means that fewer men can receive legal guidance.

D. Men under sentence of death or facing prosecution for serious crimes will not be counseled by students.

E. Men who have attorneys active in their cases will not be counseled by students unless written permission is obtained from the attorney.

IV. GUIDELINES FOR LAW STUDENTS

A. Visiting Information

1. Law students may interview clients from 9:00 A.M. to 3:00 P.M., Monday through Friday. Students must arrive prior to 2:00 P.M. for visits to be initiated. No interviews will be scheduled on weekends or holidays.

2. Men on isolation or administrative segregation status are not available between 11:00 A.M. and 1:00 P.M.

3. Visits will be limited to one hour when the visiting room is crowded.

4. Students will not wear blue or black jeans which might be confused with inmate clothing.

5. The Visiting Room Officer will approve interviews if the student has the following items:

C. Consultation with Staff

1. Students will not be permitted access to inmate central files. Non-confidential materials in the records can be discussed with staff members upon request.

L. S. NELSON,
Warden.

LSN:JWLP:ajr

SQ10 #403-A 4-14-71

San Quentin State Prison Warden's Rules

Chapter II. Article 4 MAIL

Q2402. GENERAL MAIL PROVISIONS: The following are in addition to the Director's rules regarding mail.

1. You may correspond with relatives, friends, bona fide business contacts, courts, attorneys and public officials. All mail to/from courts, public officials and attorneys will be recorded. Other mail may be recorded as circumstances warrant.

2. Incoming letters may contain a reasonable number of enclosures such as newspaper clippings, religious pamphlets and unframed photographs. You may receive a total of 15 embossed U. S. Post Office envelopes and 10 U. S. Postal Cards each month. Funds for your trust account may be sent by money order or certified check only. Nothing else may be mailed in without prior permission. Items received without a permit will be returned to the sender at your expense. C.O.D. packages cannot be accepted. Permission to buy or receive items not listed here will be in accordance with San Quentin Institution Order #408.

3. Magazine and newspaper subscriptions and paperback books may be ordered for you by your correspondents in addition to orders you may submit in accordance with San Quentin Institution Order #408. These must come directly from the publisher only.

4. All incoming and outgoing letters, enclosures and publications must conform to Penal Code Sections 311, 313 and 2600 as well as to applicable Federal Postal regulations. Material that is obscene, incites to violence or that jeopardizes institution security will not be permitted.

5. You may not place advertisements in any publication or send coupons for free offers, book clubs, etc.

6. If correspondents indicate that they do not wish to hear from you, you must stop writing them or be subject to disciplinary action.

7. Correspondence between prisoners will be approved only as follows:

   A. Where the prisoners are close relatives.
   B. For legal purposes only where crime partners are appealing their conviction.

8. Either the CDC-116, inmate stationery, or lined tablet paper purchased at the canteen may be used. Letters, other than to attorneys, courts or officials, are limited to two pages, written on both sides, for canteen tablet paper only.

Revised - March 25, 1971

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Original filed
Oct. 27, 1972
Clerk, U.S.Dist.
Court,
San Francisco

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	No. C-71 543 ACW (Three-Judge Court)

ANSWERS OF DEFENDANT LOUIS S. NELSON TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NUMBER 3:

'Letters found objectionable by the mailroom staff may be rejected for mailing for any of the reasons listed in Exhibit A to the amended complaint filed herein.

ANSWER TO REQUEST FOR ADMISSION NUMBER 3:

Checklist (Exhibit A) is not used at San Quentin Prison. Many of the items specified on this form do not constitute

reason for rejection at this institution.

REQUEST FOR ADMISSION NUMBER 4:

Letters found objectionable by mail-room staff may also be rejected for mailing for other reasons as deemed appropriate by institutional personnel, and such reasons may then be noted in the blank spaces on Exhibit A to the amended complaint.

ANSWER TO REQUEST FOR ADMISSION NUMBER 4:

I am aware of no reasons for rejection at this institution which are not stated on the form.

REQUEST FOR ADMISSION NO. 28:

The newspaper article attached as Exhibit F to the amended complaint accurately states that a San Quentin inmate was charged in a disciplinary proceeding with violation of Director's Rule 1201, possessing and writing militant material, a letter.

ANSWER TO REQUEST FOR ADMISSION NO. 28

A San Quentin inmate was charged in a disciplinary proceeding with violation of Director's Rule D-1201, possessing a writing of militant material.

LOUIS S. NELSON
Defendant

Subscribed and sworn to before me
this 27 day of October, 1972

Notary Public

THOMAS A. BRADY
Attorney for Defendant Nelson

EVELLE J. YOUNGER, Attorney General
EDWARD A. HINZ, JR., Chief Assistant
Attorney General--Criminal Division
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filed Nov.1, 1972
Charles J. Ulfers,
Clerk

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	Civil Action No. C-71 543 ACW (Three-Judge Court) ANSWER TO REQUEST FOR ADMISSIONS

Defendant R. K. Procunier hereby answers with respect to plaintiffs' request for admissions in the above-entitled case, wich request was served on counsel for defendants on September 13, 1972, and states as follows:

Item 12:

Item 12 is not true. All prisoner letters to attorneys are routinely processed by the mail room as legal mail if they are so designated by the inmate. Such letters may be, but are not nessarily examined for content.

Item 13:

Item 13 is not true. All letters from attorneys to prisoners are routinely processed by the mail room as legal mail if they are so designated by the attorney or if written on letterhead stationery. Such letters may be, but are not necessarily examined for content.

Item 19:

Based upon information from the custodian of the inmate record, the department has no record of the request for interview.

Item 20:

Item 20 is true.

Item 21:

Based upon statements made to me by institution heads, item 21 is true.

Item 23:

Based upon information from the custodian of the inmate record, the department has no record of the request for correspondence.

Item 24:

Genuineness of the attached as Exhibit B is admitted. It should be noted that no action was taken concerning this incident.

Item 25:

Genuiness of the letter is admitted.

Item 26:

uiness of the letter is admitted.

Item 27:

Genuiness of the letter is admitted.

Item 29:

Genuineness of the attached as Exhibit L is admitted.

Based upon information from the custodian of the inmate record, the department has no record with which to ascertain the genuineness of Exhibits H and J.

Dated: October 27, 1972.

R. K. PROCUNIER
Director of Corrections

THOMAS A. BRADY
Deputy Attorney General

Deposition of
RAYMOND K. PROCUNIER
November 16, 1972

BE IT REMEMBERED that, pursuant to notice of taking deposition, on Thursday, the 16th day of November, 1972, commencing at the hour of 1:35 p.m., at the offices of the Department of Corrections of the State of California, 714 P Street, Sacramento, California, before me, Richard C. Bradford, a Notary Public in and for the County of Sacramento, State of California, personally appeared

RAYMOND K. PROCUNIER,

called as a witness by the Plaintiffs herein, who, being by me first duly sworn, was examined and interrogated as hereinafter set forth.

--oOo--

RAYMOND K. PROCUNIER,

called as a witness by the Plaintiffs, being first duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Turner) Mr. Procunier, you are presently the Director of the California Department of Corrections?

A Yes.

Q Broadly, what are your duties as director?

A I'm responsible to the Governor for the safe-keeping and programming of about 20,000 inmates inside institutions, about 21,000 parolees, all who have been to State

Prison, and/or through civil narcotic program, and general administrator of all the institutions, direct supervisor of the deputy directors and wardens superintendent, and provide all the supervision for that organization.

Q Do you from time to time issue director's rules on matters of institutional policy?

A Yes.

Q I show you a copy of a document that has been marked Plaintiffs' Exhibit 1 and direct your attention to the first paragraph under article 4, which is entitled "Policy regarding mail." Is that policy still in effect?

A Yes.

Q I notice at the bottom of the document it bears a date January 5, 1970, but the policy that is set forth there has not been changed, is that correct?

A Right.

Q Under rule 2401 on that same page, where the mail privilege is discussed, is that provision still in effect?

A Yes.

Q Are your mail regulations based on that premise?

A Yes.

Q Mr. Procunier, do you recall answering requests for admissions in this case?

MR. BRADY: I worked with Mr. Hull basically on that, but he did sign.

Q (By Mr. Turner) I think this will refresh your recollection.

A Yes, I remember that.

Q Now, according to request for admission number 2, which inquired about outgoing

letters being read by mail room staff in the institutions, your response was that the statement would be true "if amended to the effect that the prisoners' letters may be read, and that mail room staff or other employees as designated by the warden may inspect the letters." I just want to be sure what was meant by that. Do you mean that mail room staff are authorized to read letters but may not necessarily do so?

A No, that was not exactly what I was trying to get across.

MR. BRADY: Do you have copies of these?

MR. TURNER: We are talking about number 2.

THE WITNESS: What was the question, what was I trying to say there?

Q (By Mr. Turner) Yes. I was trying to find out why your response to that letter was qualified.

A The reason it is qualified is that essentially, since we have such a varied inmate population, and since we have such varied institutions in terms of control and security and all the related things; for example, the one extreme would be men's freedom in camp as opposed to the Folsom Adjustment Center. I was just trying to point out in each one of these cases that the rules will be different, and I want them to be different, and I want them to be specifically related to the probelm involved with the individual, if there is one.

Q In other words, in some institutions, all of the mail may be read, and in others, not all of the mail?

A Right. Within one institution, all of it may be read for one man or a group of men. The other end of the continuum -- depending upon what we consider to be the needs of the institution security and the needs of the man.

Q Your answer also indicates that mail can be read by employees other than mail room staff, is that correct?

A Correct. The reason for that is some institutions are organized where all the censoring and reading is done in the mail room, and other insitutions are organized such that it is read by a first watch or third watch personnel, depending on the specific organization and the peculiarities of each institution.

Q Mr. Procunier, I show you a document which has been marked Plaintiffs' Exhibit 1 to the deposition of Sergeant Miranda at Folson Prison that we took this morning, which appears to be a mail room form that is used at Folsom Prison, and was apparently put into use this year. Do you review forms of that nature when they are promulgated by the institution?

A I review their policy. Not necessarily all their forms, no.

Q The form, Exhibit 1 there, lists a number of reasons for rejecting mail and not permitting it to go out of the institution.

Are those permissible reasons under your director's rules for rejecting letters?

A They're not numbered, but I'll take them one at a time. The first one is, second one is, third one is, fourth one is, fifth one, okay, sixth one, okay, seven, okay, eight, okay, nine, okay, ten, okay, eleven, okay, twelve, okay. Wherever number I am, okay, next one, okay, next one is blank.

Now, under the bold heading down below --

Q Well, I am not cerned about that. The officer this morning testified that at Folsom when he considers a letter to be rejected for a reason that is not listed specifically, that they will fill in the blank; is that your understanding?

A Right. That's okay, too.

Q I show you a slip that has been marked Plaintiffs' Exhibit 2, which we obtained from a prisoner at San Quentin. Do you know whether that form is used at San Quentin Prison?

A No.

Q Do you know that it is not?

A No.

Q Would the reasons that are stated on that form be permissible reasons under your director's rules for rejecting letters?

A Yes.

--oOo--

Q All right. Mr. Procunier, I show you a document which has been marked Plaintiffs' Exhibit 4. It is also marked Exhibit B to an affidavit. I am just referring to the yellow slip that has been marked. That was sent to us by a prisoner at Vacaville. Do you know whether that form was and is being used at Vacaville; A No.

Q Do you know that it is not?

A No.

Q On the check list, there is offensive or obscene remarks or material. Would that be a permissible reason under your director's rules for rejecting a letter?

A Yes.

--oOo--

Q How long have you been director in the system?

A A little over five years.

Q During that time, I take it there has been control of social correspondence?

A You mean by social correspondence what I consider just average regular correspondence with family and friends?

Q Yes.

A Yes, in some form or another, it has been.

Q Have there been any experiments with uncensored correspondence? A Yes.

Q Could you describe what those have been?

A We have had various ones, but probably the most typical one would be at CRC, California Rehabilitation Center, at Corona, where we have people under the civil narcotics control program, and for some time

now, they haven't had, for the regular population, any mail lists or censorship either way, and we've experimented with it at other places.

Q When you say you haven't had censorship either way, you mean incoming and outgoing mail?

A Right.

Q The letters are not actually read?

A Except in specific cases. The general rule down there is that a person can correspond with whom he desires, he or she desires.

--oOo--

Q Are you presently considering any revisions of the rules on mail?

A Yes, we're in the process of that now.

Q Do you think that the rules should be revised?

MR. BRADY: Well, once again, we're getting into an opinion here, and we object to that.

Q (By Mr. Turner) Do you agree with us that the present rules or the old rules are unconstitutional?

MR. BRADY: Same Objection.

MR. TURNER: State the ground of the objection.

MR. BRADY: As calling first for an opinion on the part of the witness. Also, a legal opinion, ultimate legal opinion, really, of course, of an expert.

Q (By Mr. Turner) In your capacity as director, do you believe that the old or

present rules governing mail are bad correctional policy? A No.

Q Could you describe what revisions you have under consideration?

MR. BRADY: I think you better narrow that. It's not an objection, but just narrow --

Q (By Mr. Turner) In what respect are you considering revisions of the rules regarding mail?

A That's almost the same exact question.

Q Well, referring specifically then to director's rule 2402, are you considering any changes to that rule?

MR. BRADY: It might be better if we worked off the older rules to make it easier. Just refer to them by number.

THE WITNESS: We are talking about now only the director's rules , changes?

Q (By Mr. Turner) Right.

A The answer to your question is yes.

Q What revisions are being considered?

A I'm contemplating revisions in the director's policy rules regarding mailing so they will be more flexible, so it can include all of the institutions. However, that rule may still well be in effect in some of the institutions in the department on an institutional basis rather than a departmental basis.

Q What about director's rule 1201 regarding magnifying grievances?

A That is under inmate behavior. Excuse me, 1201?

Q Yes.

A Again, the departmental level, the answer to you question is yes, I am contemplating that rule, but again, it may end up in a -- it may end up as an institutional rule in some institutions.

Q In other words, what you are contemplating is giving the institutions the power to promulgate rules which are like these, but they are not required to --

A My approval. Can I describe the process here? Would it be appropriate?

Q Yes, Please do.

A I am going to change, basically change the over-all rules of the department so they provide for more flexibility throughout the department, and also approve the specific rules and regulations for every institution, as has been the practice in the past. So I want to be careful when I answer yes or no to these to be sure we understand that we are only talking about the director's rules, and I haven't got any idea yet what each institutional rules we will look at until I have had a chance to review and either disapprove them or approve them.

Q Is it correct to say that you are not considering a change in the rules that would prohibit the institution from having rules like these two that we have just referred to?

A The possibility of having those rules -- I am not changing the policy of the department to the extent that it would

prohibit institutions from recommending that type of a rule.

Let me give you an example. I think you will get to the point I am talking about. That is the rule that comes the closest in the newest contemplated rule, and I am not certain this is the way they will end up. For example, you must -- instead of 1201 and this combined with several other ones, the new rule that is contemplated may read, "You must not make remarks or noises which are insulting or show disrespect to others."

Q Referring to director's rule 1205, definging contraband, and including the definition of contraband, any writings expressing inflammatory political, racial and so on, views or beliefs; is there any change contemplated in that rule?

A Yes.

Q In what respect would you be changing that rule?

A The plan now in the rough draft that is under consideration by my staff and ultimately for my decision is to consider that contraband is the use of rather than the material of it as being contraband and where it would be kept in the institution.

Let me give you an example. Rather than stating it the way it is stated -- which one are we talking about under the old rule?

Q 1205, in particular sub parts D and F.

A To give you the general thrust, instead of stating it that way, we are

contemplating they must not possess or assist in circulation of any writings or voice recordings in any form, or violating any form of behavior constituting escape plans or plans of production and requisition of weapons -- the warden may order that inmates be issued property to which the inmate will have access under supervision.

The basic thrust here is that rather than to determine contraband and destroy it or take it away, we are going to take a look at it differently in terms of the possible use of it, and if we feel that it could be used for the purpose of, as I have described earlier, then we would put it in the inmate's property, but not confiscate it, and give him access to it under certain local conditions.

Q You have agreed in response to our request that under the present rule, letters may constitute contraband. Would that be changed under the revised rule?

A Not necessarily, if they feel it was within the parameters of what I just described to you. The way we would handle them would be they would be handled differently.

Q I take it that with regard to any revisions that you make, that you are reserving the right to go back to the old regulations or different regulations at any time, aren't you?

A With any regulations that I adopt, I am reserving the right to review them.

Q Well, if in your judgment any revised rule didn't work out the way you

thought it should, I take it you are reserving the right to go back to what is now the present rule, aren't you?

A If we find that any rule or regulation is not serving the purpose for which it is intended, I reserve the right to modify it.

Q When a letter is rejected for mailing now in the mail rooms at various institutions, what recourse does a prisoner have if he thinks he has a right to send a letter out?

A He has several. I'll go through them in chronological sequence. To appeal it to the mail sergeant or his equal, and then through the hierarchy, to the warden, and if this is not satisfactory, he can write me a sealed letter, or can appeal it to me directly without being sealed. If he's not satisfied with that, this would be looked into and a decision made. If he's not satisfied with that, he can get this reviewed by any elected official in California by writing them a sealed letter.

Q Is there any director's rule that spells out specifically what procedure the prisoner is supposed to follow?

A For appeals?

Q When a letter is rejected.

A I don't think so. This falls under the general category of -- well known to inmates and all staff, not restricted to mail appeals from mail decisions, but from any decision, well known in the department, that they can appeal decisions to the director by virtue of the rule that stipulates they can write a sealed letter to the

director. It implies this, if not specifically states it.

Q You say it is well known to the inmates. Is it well known -- do you think that their first level of appeal goes to the mail room sergeant himself?

A I would say yes. More accurately, in my experience, I feel this is well known.

Q In many, if not most cases, isn't it the mail room sergeant himself who rejected the letter?

A No.

Q Who would it be if not the mail room sergeant?

A Mail room employee, or an officer or person responsible for reading it, which may or may not be related to the mail sergeant.

Q You mean it could be a clerk in the mail room?

A Yes, in some cases.

Q Mr. Procunier, Mr. Brady kindly let us look through the central file of the two individual prisoners who brought this lawsuit, and in the file of Robert Martinez, one of the plaintiffs, we found a copy of this letter and envelope which have been marked together as Plaintiffs' Exhibit 5. I would like you to take a minute to examine the letter and tell me if there is any reason why such a letter should be put in a particular prisoner's file.

A Would you repeat the question?

Q I am just wondering whether from your point of view as director there is any reason why such a letter should be included in the inmate's central file?

A Where was this mailed from, from what insitution?

Q Whatever institution -- it was at Crestline.

A At Crestline, no.

Q Is it correct that the inmate's central file is available to the Adult Authority at the time of parole review?

A Yes.

Q In this letter that has been marked Plaintiffs' Exhibit 5, the inmate talks about his commitment to Laraza. Do you think that might have had anything to do with retention of the letter?

A I can't answer that.

MR. BRADY: Once again, you are asking for an opinion.

Q (By Mr. Turner) Mr. Procunier, I show you a copy of another letter from the same inmate's file that has been marked Plaintiffs' Exhibit 6, which appears to be a letter to a federal judge. Is there any reason why such a letter as that should be included in the central file?

A What was the question again?

Q Can you think of any reason why such a letter as that should be included in an inmate's central file?

A No.

Q What is the policy when a letter should be copied and placed in a central file?

A It's up to the judgment of the administrator in the insitution.

Q Would that include the mail room sergeant?

A Yes, he could initiate it. I'm not certain that any are placed in there on his decision alone, but he could well be the one that initiated it.

Q Is there any director's rule that specifies when a letter should be included in the prisoner's file?

A No.

Q It is pretty much up to the institution?

A Yes.

--oOo--

Q Does the Department of Corrections have any law student legal assistant programs in operation now?

A Yes.

Q What institutions?

A They come and go from time to time, so I'll tell you my last facts were at Vacaville, Soledad and Chino, CIM, CIW, Women's Institution. We had several law students working with us this summer throughout the department, too, working on headquarters staff, and there are others, but I can give you a list if you want.

Q Isn't there a program at Folsom?

A Yes.

Q And one at San Quentin?

A Yes. But I want to be sure and give you exactly what -- I understand they come and go, and I don't know whether it's between semesters.

Q Do you have any rough idea of how many students might be involved in all these programs?

A No. It would be too rough an idea, but I can get you that.

Q What are the purposes of that?

A One purpose is to provide training for the students, and the other is to provide legal counsel for inmates that have a question, whether they need it or not, and haven't got an attorney. The other reason, and one of the biggest purposes, is to help establish a better relationship between the lawyers and law schools and our department than we previously had.

Q Does the department make any inquiry into the qualifications or background of the students who participate?

A If you mean by that to decide whether or not they are bona fide students, yes.

Q Do they make any inquiry at all?

A I'm not certain. We ask that -- we are assured by the school, and we make certain that the schools assure us that they are students, if you call that an inquiry, yes.

Q In other words, you take the school's word for it, that they are students, and you don't look beyond that?

A No, the department doesn't go beyond that.

Q You don't make any security check of any kind on the students?

A Not as a routine practice, no.

Q Under your mail and visiting manual, prisoners can receive visits from their attorneys of record or designated representatives, but the representatives have to be either

members of the bar or licensed investigators; has that always been the rule? A No.

Q When was that changed?

A I was going to say it was in August, or late August, early September, 1971.

Q And before that time, were prisoners permitted to receive visits from unlicensed investigators?

A Yes.

Q Were there any incidents while that older rule was in effect that involved unlicensed investigators that you think posed any threat to prison security?

A Yes.

Q What were they?

A I don't recall specifically.

Q Do you recall what institutions they were in?

A No, not specifically. I'd have to go back and do a lot of -- but the general question -- the answer to it is yes. That's why I changed it.

Q Well, we have asked for specifics as to any incidents that are involved in our interrogatories. I would like to have them spelled out in those answers, just what incidents were involved that you think posed any threats to security.

A I can tell you generally without being specific what caused the problem. The real threat to security was that we were having visits from any one attorney that designated some people that we chose not to have in our institutions. That was generally the cause we found, that with some firms,

they would designate anybody to be an investigator to get them in, people that we wouldn't allow in the institutions, so we tried to correct that and still be reasonable. The only way we could control it in my judgment would be to have them be licenseded investigators.

--oOo--

D2210. SALE OF HANDICRAFT ARTICLES. Sale prices of handicraft articles may be established by the maker but within limits set by the handicraft manager. A percentage of the sale price (as determined by the Director) shall be credited to the Welfare Fund to help defray costs of handicraft operation and the balance deposited in the inmate's trust account.

Proceeds from the sale of handicraft articles made from state-owned materials must be deposited in the Inmate Welfare Fund.

ARTICLE 3. LIBRARY

POLICY REGARDING LIBRARIES

The reading of good literature and the study of technical books has a constructive influence by developing good reading and study habits, and by practice in the constructive use of leisure time. The Department has established in each institution a good library designed for educational, cultural, and recreational values.

D2301. LIBRARY PRIVILEGES. Use of the institutional libraries is a privilege which you may lose if you violate the regulations.

ARTICLE 4. MAIL

POLICY REGARDING MAIL

It is considered essential to the eventual resocialization of inmates that they maintain contact with their families and desirable friends through use of the mail privilege. Therefore, inmates are encouraged to make use of the mail privilege and every means compatible with security is provided for them to do so.

D2401. MAIL PRIVILEGE. The sending and receiving of mail is a privilege, not a right, and any violation of the rules

governing mail privileges either by you or by your correspondents may cause suspension of the mail privileges.

D2402. USE OF THE MAIL PRIVILEGES. In addition to institution regulations the following provisions will apply to correspondence:

1. All your correspondence, packages, and personal property, sent or received, are subject to inspection and censorship. You shall not be permitted to send or receive a package or communication of any nature until you have signed the required form consenting to the opening of same and examination of its contents. No C.O.D. mail or

PLF's Ex #2

Returned For Reasons Indicated_____
Get Approval Regular Channel_____
Name, Number Not In Proper Places_____
Not a Business Letter_____
Have Sender Put Name & Add. on Env._____
Use "A" or "B" Before Your Number_____
Not Proper Correspondence Prison Gossip
Quota For The Week Exhausted_____
106 Sent Has Not Been Returned_____
No Mail Sent Out Until 106 Approved_____

Plaintiffs' Ex #3

Director's Rules Chapter I, Article 1

CHAPTER I. INMATE RULES

ARTICLE 1. INMATE RESPONSIBILITY

NECESSITY FOR RULES

Rules are necessary in every community and institution to protect people's rights. The rules in this book are made by the Director of Corrections and may be changed by him, under provisions of Penal Code Section 5058. Every inmate is expected to obey these rules and regulations of the institution in which he lives.

D1101. RESPONSIBILITY OF INMATES. All inmates, regardless of commitment circumstances, are subject to the Director's rules, the institutional regulations, and to all applicable laws. Read the rules and the institutional regulations and know what is expected of you. Provision will be made for each inmate to become familiar with the rules. Not knowing the rules is no excuse for violation.

ARTICLE 2. BEHAVIOR

POLICY REGARDING BEHAVIOR

The best control of behavior is self-discipline. This article describes expected behavior. Failure to comply with these rules will be cause for disciplinary action. If you should become a menace to yourself or others or to property or to the morale of the general population, you will be segregated from others. This might be for medical, psychiatric, disciplinary, or administrative reasons.

D1201. INMATE BEHAVIOR. Always conduct yourself in an orderly manner. Do not fight or take part in horseplay or physical encounters except as part of the regular athletic program. Do not agitate, unduly complain, magnify grievances, or behave in any way which might lead to violence.

D1201. OBEYING ORDERS. Promptly and politely obey all orders or instructions given by employees or by others in charge of inmates.

D1203. SANITARY PRACTICES. Adopt habits and practices which assure acceptable personal hygiene and sanitary conditions. Place all refuse in containers provided.

D1204. OFFENSIVE LANGUAGE. Do not use profane or obscene language. Do not boo, whistle, shout or make other loud and disturbing noises. Do not make sarcastic or insulting remarks to or concerning others.

D1205. CONTRABAND. Anything not issued to you, sold to you through the Canteen, permitted by the rules, specifically authorized, or any property of another, or anything which is being misused is contraband and will be confiscated. Money you find on the grounds and voluntarily surrender may be

Deposition of

KENNETH WARREN MIRANDA

November 16, 1972

BE IT REMEMBERED that, pursuant to notice of taking deposition, on Thursday, the 16th day of November, 1972, commencing at the hour of 11:00 a.m., at the offices of the Department of Corrections of the State of California, 714 P Street, Sacramento, California, before me, Richard C. Bradford, a Notary Public in and for the County of Sacramento, State of California, personally appeared

KENNETH WARREN MIRANDA,

--oOo--

KENNETH WARREN MIRANDA,

called as a witness by the Plaintiffs, being first duly sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Turner) Would you state your full name and address for the record, please sir.

A Kenneth Warren Miranda, 1220 School Street, Folsom, California.

--oOo--

Q And your present position is mail sergeant?

A Yes.

Q What are your duties as mail sergeant?

A Record mail, control mail, and I supervise the work of four female clerks.

Q What do they do?

A They record mail, search, censor mail, process the mail and applications.

--oOo--

Q Why don't you explain everything it is that you do when you record mail.

A Okay. Well, we'll start out -- we have the mail divided into two sections, or three sections; one and two is referred to as social and business mail, and the third section is referred to as legal mail. Now, we'll go to social mail. The social mail is just merely what it indices. In order for an inmate to correspond with anyone socially, he is required to submit a CDC form 105, mailing and visiting application. When or if approved, the party that he's submitted a request for is recorded on the front side of the mail record indicating the person's full name, his address and the relationship. This is one form of recording.

Now, the other form is a business mail, which requires the approval of the employee whose department that falls under. This is recorded on the back side of the mail record, which is referred to as a special purpose mail. We record who the mail -- or who the letter goes to, the address, and who has authorized that letter to be sent out.

Now, the third, which is legal mail; this is recorded on the back of the mail record, indicating who it is going to, the address.

Q Do you have a mail record for each prisoner?

A Yes.

Q Where is that kept?

A That's kept in the mail room.

Q How many prisoners do you have at Folsom now, about?

A 1,646.

--oOo--

Q What was this form used for?

A This form is used for returning inmate mail to them. This is to inform them why we're returning the mail, plus any mail that we may get in from outside source. The lower portion is to inform them what to do to correct whatever might be involved.

Q You say a different form is in use now?

A Yes. It's basically the same format with slight modification.

Q In other words, it's a kind of check list of reasons?

A Correct. We change it quite often. Since I've been there, I imagine we've changed that form maybe nine, ten times.

Q On Exhibit A, besides the listed reasons for returning letters, there also is a blank space with a box for checking next to it. Was your practice to fill in other reasons?

A Right. This was for any violation that may come out that wasn't covered by this, or to explain the reason why we would -- if it was kind of basically infringing on certain rights, then we would try to explain it in the inner portion here.

Q And the blank would also be filled in with reasons that are not listed in the form?

A Yes. This is what the lines are for, for the reasons that are not listed.

Q Is that also true on the new form?

A Yes.

Q You don't have a copy of your form with you today, do you?

A No. I believe I gave you a copy.

MR. BRADY: I think I have it.

Q (By Mr. Turner) Sergeant Miranda, I show you a form that has been marked Plaintiffs' Exhibit I and ask you whether that is the form that is presently being used at Folsom?

A That's correct, that's the one.

--oOo--

the only reason we make new forms -- to try to change them -- is to try to keep abreast of any changes that might be made.

Q Have there been any changes in the rules regarding mail in the last six months?

A Been a lot of them.

Q What are the major changes besides legal mail? Put aside legal mail for a moment.

MR. BRADY: Excuse me for interrupting. Is this in Folsom?

Q (By Mr. Turner) In the Folsom procedure.

A In the last six months, no, not counting legal.

Q You mentioned that you supervise the work of four female clerks who also re-

cord and control mail, is that correct?

A Correct.

Q Do they also read the mail?

A Correct. We're talking about what type now, legal?

Q Social mail.

A Social mail, yes.

Q What specific training are they given for that job?

A The training is actually on-the-job training given by me.

Q What is the specific training that you give them?

A First of all, they're instructed on how to use the card and what should or should not be recorded, what is required to be or be not approved, and how to process the mailing, individual applications.

Q What about the contents of letters; what are they instructed about that?

A They're instructed when they read something that they feel in their own mind might be something in conflict with the director's rules to refer it to me, and I make the determination on it; then the basic rejections are just set policy, which they can do automatically.

Q Do you yourself use the director's rules as a guide?

A Yes.

Q Under director's rule D2401 regarding mail privilege, our copy of the rules, which I'll show you, provide that the sending and receiving of mail is a privilege,

not a right, and any violation of the rules governing mail privileges either by you or by your correspondent may cause suspension of the mail privileges.

Is your control of the mail at Folsom based on that premise?

A Yes. Now, again, we're talking social mail?

Q Yes.

A And business mail, right?

--oOo--

Q What about defamatory;how do you determine whether a letter is defamatory?

A I would term that as defamatory if they were belittling staff or our judicial system or anything connected with Department of Corrections.

Q Under director's rule D1201, prisoners are prohibited from, among other things, magnifying grievances. Is that director's rule used also in controlling the mail?

A Yes.

Q How do you determine whether a prisoner is magnifying grievances?

A Usually if the prisoner is magnifying the grievance, he'll write out, and instead of just complaining about what has actually happened, he's got it to the point where he's belittling the staff because of their incompetency, or they would be belittling the staff because they failed to heed to his desires. This is the way I term magnifying it, calling it out of proportion.

Q That same rule, 1201, also prohibits undue complaining. How do you determine that?

Well, that's a hard one, because basically if we get a letter of that nature, whatever they're complaining about, or unduly complaining, we'll usually inform the head of that department, and then basically we just let it go.

Q Well, what if the prisoner makes what you feel are too many complaints; would that fall within that rule?

A It probably would, but I wouldn't say so, because, like I say, I don't basically view that one, because I've got the other one, unduly grievance.

Q You mean magnifying?

A Magnifying grievance. We get people where that's all they do is complain.

Q When a letter is rejected in your mail room, what recourse does the prisoner have if he thinks he has a right to send the letter?

A He can see the captain or the associate warden of custody or my supervisor, and I hold what we term as an open line. Once a week for one hour, I go inside, and I will discuss the problems with any inmate that wants to come in and talk to me.

Q Is there any director's rule that establishes any procedure for what a prisoner is supposed to do if he thinks that a letter has been unjustifiably rejected?

A Not to my knowledge, no.

Q Is there any institutional rule at Folsom that spells out any such procedure?

A No.

--oOo--

Q You mentioned a minute ago in answer to Mr. Brady's question that in some cases the contents of a letter may be severe enough to require disciplinary action, is that correct?

A Correct.

Q You mean the letter might give rise to CDC115 report?

A Correct.

Q And a disciplinary hearing?

A Correct.

--oOo--

Plaintiffs' Ex #1

FOLSOM STATE PRISON

Notice of Special Disposition - Inmate Mail

This Letter Is Returned for the Reason(s) Checked Below:

__ Not an approved correspondent. Submit CDC 105 if you desire to correspond. __ Hold letter for approval of application.
__ This party has been removed from your approved list.
__ Cannot go sealed; see Rule D-2404.
__ Criticizing policy, rules or officials.
__ Improper stationery. __ Limit, two (2) sheets stationery.
__ Write in English.
__ Put your correct name and number in the upper left envelope corner.
__ Put your name, number and the relationship of the person addressed on the underside of the flap.
__ Needs official approval. See.....
__ Not approved.
__ Not considered a business letter.
__ Mentioning inmates by name or number or relating gossip or incidents.
__ Use stamped envelopes to pay postage; withdrawal slips accepted only for legal postage or postage in excess of $1.00.
__ Envelopes must not be folded, soiled or otherwise damaged if used as postage payment.
__ Free mail permitted only if completely without funds.
__ Your quota of free mail for this month is exhausted.
__ Hobby cards must be approved by Handicraft Manager.
__ Use government stamped embossed envelopes for mailing letters.
__ Letter is overweight; send..... stamped envelopes with letter for extra postage. __ Cannot certify or register without funds.
__ Legal mail or job requests may be paid for with government embossed envelopes or withdrawal slip (submit withdrawal slip even if completely without funds). All legal mail or job offers will be mailed.

__ Cannot request samples or free literature.
__ .....
.....
.....

This Letter Is Being Delivered to You, But the Following Special Instructions Must Be Followed or Future Mail May Be Returned.

__ Not an approved correspondent. You may answer this letter. If you wish this person considered for placement on your mail list, submit a CDC 105, Mail and Visiting Application, form.
__ Notify this party to place his name and return address on the envelope.
__ Excessive powder or lipstick smears.
__ Money Orders must be made payable to Department of Corrections.
__ Stamps, embossed envelopes, hardbound cards or articles of any kind are not permitted without prior approval.
__ .....
.....
.....FSP 1027 REV 8/72 20M

Deposition of
HUEL DEAN MORPHIS
November 16, 1972

BE IT REMEMBERED that, pursuant to notice of taking deposition, on Thursday, the 16th day of November, 1972, commencing at the hour of 2:55 p.m., at the offices of the Department of Corrections of the State of California, 714 P Street, Sacramento, California, before me, Richard C. Bradford, a Notary Public in and for the County of Sacramento, State of California, personally appeared

HUEL DEAN MORPHIS,

--oOo--

Q (By Mr. Turner) Mr. Morphis, would you state your full name and address for the record, please?

A Huel, H-u-e-l, Dean, D-e-a-n, Morphis, M-o-r-p-h-i-s, Post Office Box 75, Represa, R-e-p-r-e-s-a, California.

Q Are you presently employed by the California Department of Corrections?

A Yes.

Q In what capacity?

A Program administrator, Folsom State Prison.

Q How long have you had that position?

A A little over three years.

Q When did you first start with the department?

A April 14, 1956.

Q What was your job then?

A Correctional officer.

Q You worked your way up through the ranks to your present position? A Yes.

Q As program administrator, do your duties include anything to do with mail and correspondence?

A Yes, to a degree.

Q What do you actually do?

A I happen to be in charge of a particular unit that houses inmates, and, therefore, am responsible for the mail, incoming, outgoing.

Q What unit is that?

A The Adjustment Center at Folsom.

Q Is that one of the units at Folsom where all of the mail, incoming and outgoing, is read?

A Yes.

Q Do you read the mail yourself?

A No, not ordinarily.

Q Who does?

A The correctional officers.

Q In what cases do you read the mail yourself?

A Only the ones that would be referred up on a question, or appear to be not proper in content.

Q Mr. Morphis, I show you a copy of a letter which purports to be written to you, dated December 6, 1971, which is attached as Exhibit C to the amended complaint in this lawsuit, and I would like to direct your attention in particular to the first sentence of the third paragraph where you say that the regulations do not permit inmates to write

material that is discriminatory or derogatory toward individuals or races. Is that your understanding of the department's policy?

A Yes.

Q In referring to departmental and institutional regulations, were you referring to the director's rules?

A I don't recall.

Q Well, is there anything else that you could have been referring to?

A We have institutional regulations.

Q At Folsom? A Yes.

Q I have never seen a copy of it, but do you recall whether they prohibit matter which is discriminatory or derogatory?

A Well, I happened to revise them, but I can't quote them for you in their entirety.

Q In your understanding, would any director's rule cover this statement that you made in the letter?

A I don't happen to have a copy in front of me. I don't have those memorized, either.

Q Mr. Morphis, you say that you don't have the rules memorized, and certainly nobody would expect you to, but do you actually refer to the director's rules when you are reviewing prisoner mail?

A Ordinarily I use the Folsom directives.

Q Do you actually refer to them in reviewing mail?

A Yes, as I don't recall what they particularly cover, I do.

Q What is the Folsom rule called? What is it, Folsom institutional rules, or what is

the title of the rules you use at Folsom?

A It's a mail regulation published by the warden.

Q Mr. Morphis, I show you a copy of a letter that has been marked Plaintiffs' Exhibit 1, and it is a letter dated July 16, 1972, a prisoner named Clarence Morgan, and it has on it a notation "Not approved for mailing, H. Morphis"; is that your handwriting? A Yes.

Q Do you recall not approving that letter?

A Yes.

Q Why did you reject that letter?

A Because of the content.

Q Do you recall anything in particular in its contents that is objectionable?

A Well, basically in referring to the different employees at the institution and making allegations and stating mistruths and so forth.

Q What in there in particular is mistruth in your judgment?

A Well, about half of it.

Q Mr. Morphis, I show you a piece of paper that has been marked Plaintiffs' Exhibit 2 addressed to someone named Morgan and signed H. Morphis. Did you write that note?

A Yes.

Q Is that the same prisoner who wrote this letter that we referred to before, Plaintiffs' Exhibit 1?

A Yes.

Q In the note you state that his letter contains too many disrespectful comments and

misrepresenting a fact. Is it your understanding that the rules don't allow disrespectful comments and misrepresenting of the facts?

A Well, there's a particular director's rule concerning at that time magnifying grievances, which is what he was doing in that regard. He would complain or unduly complain or magnify grievances, and I happen to know the circumstances and the facts and the comments that he was making, things that he was referring to, that just simply weren't true.

Q I now show you a document that has been marked Plaintiffs' Exhibit 3, which appears to be a letter from a prisoner named Charles Kellum, and it also bears notation "Not approved for mailing, H. Morphis"; is that your handwriting? A Yes.

Q Did you reject that letter?

A Yes.

Q Why is that?

A Must have been because of content.

Q Is there anything in particular in the content of that letter that you think is objectionable?

A Basically the same thing, a small section of it here concerning magnifying a situation, making complaints and derogatory remarks, comments.

Q Have you had a chance to look over the whole letter now?

A Yes. Basically in this area in here.

Q Which page is that, the second page of the letter?

A Yes.

Q I am going to show you a copy of a letter that has been marked Plaintiffs' Exhibit 4, apparently written by a prisoner named Richardo Ruiz, and also bears a notation "Not approved for mailing, H. Morphis"; did you reject that letter, also?

A Yes.

Q Do you recall why you did so?

A As I recall, it was concerning -- he was writing out erroneous information concerning a particular program at another institution and simply quoting erroneous facts as published in various papers accusing that he was going to be operated on and turned into a vegetable and so forth, which had no bearing on the particular type of program that he was being asked to go through. In fact, I think in my note to him it is stated as such.

Q I now show you a note that has been marked Plaintiffs' Exhibit 5, apparently a note written by you to Ruiz; is that the note you are referring to?

A Yes.

Q In which you state that he is not allowed to pass out misinformation, even if it is a quote from the newspaper, is that correct? A Yes.

Q I show you a copy of a letter dated May 11, 1972, written from a prisoner, named Kelly, which as been marked Plaintiffs' Exhibit No. 6, and bears a notation "Not approved for mailing, H. Morphis"; did you reject that letter?

A Yes.

Q The first part of the letter is marked okay. Is that your notation?

A Yes, I believe it is.

Q The second part of the letter bears the notation "has something to do with the war in Viet Nam". Do you recall why that letter was rejected?

A No, it's not very legible. I'm not sure I can make it out. There's enough of it that I can't make out -- I'm not sure. I couldn't tell you.

Q Would the reference to the Viet Nam War have anything to do with it?

A No, definitely not.

Q You think it must have been something else in that paragraph?

A Yes. It would have been his comments concerning something that he was involved in. I would assume.

Q Turning to the question of incoming letters as opposed to outgoing letters, do the same standards in reviewing the contents of the letters apply?

A To a degree, yes.

Q For example, might you reject an incoming letter on the grounds that it contains prison gossip?

A Yes. Before we leave this, can I ask a question?

Q You want to do this on the record?

A Sure, I don't mind. Well, I don't know.

MR. BRADY: I don't know what your question is.

MR. TURNER: Why don't we go off the record.

(Short discussion off the record.)

Q (By Mr. Turner) Mr. Morphis, I show you a copy of a letter apparently written by you and dated September 28, 1972. It has been marked Plaintiffs' Exhibit 7. Did you write that letter? A Yes.

Q I also show you a copy of a letter dated September 26, 1972, that has been marked Plaintiffs' Exhibit 8. Is that the letter that you referred to as being rejected?

A Yes.

Q When a letter that a prisoner wants to send out is rejected by you, what recourse, if any, does he have if he thinks he has a right to send the letter out?

A He has an appeal with the associate warden in custody. He can make a formal written appeal stating the facts as he sees them, no special format, just on a memo piece of paper, and asking that it be checked into, and that the associate make a decision on the matter.

Q Is there any director's rules that spell out that procedure?

A Well, for some time through the director's guidance, and I don't recall whether it's worded in the ruling, he's been recently revising all the rules, but through his direction, we are to have an appeal for the inmates concerning the disciplinary process and the mail process concerning any grievances, and this pertained then to the assoc-

iate warden of custody who is in charge of that. He was the first line of appeal, so this is by regulation direction, yes.

Q As I understand it, the appeal procedure that you are describing isn't just for mail, it is for whatever kind of grievance?

A Anything. Disciplinary they feel was unjust or any type of dealings that was unjust.

Q Turning now to the question of registered or certified mail, what is the procedure that an inmate at Folsom goes through in order to send out a registered or certified letter?

A Well, he simply indicates that he wishes to send this out in that regard and attaches a trust withdrawal slip so that he can pay for it, pay for the cost of it.

Q Is there any approval required?

A Well, the regulation simply states that any inmate may send registered or certified mail providing he has the funds to pay for it.

Q What regulations are you referring to?

A Folsom regulations.

Q Is that what is actually done in practice?

A To my knowledge, as far as I know.

MR. TURNER: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Brady) I just wanted to clarify your exact job at Folsom. Once again, you say you are program administrator,

so that your duties would be what, now?

A My particular duties are in charge of the Adjustment Center. I have other duties, also. This is my primary function.

Q You are subject in that, of course, to the warden, and who else in between?

A Well, I'm subject to the associate warden in custody, my immediate supervisor.

Q And ultimately to the warden?

A Yes.

Q Now, one of the latter things you talked about, the appeal or the grievance procedure, let's call it; could you go into that in a little bit more detail in regards to just how that works? If a man, let's say, just as an example, has a letter rejected which he feels should not have been rejected, what can he do?

A He can present the facts in a written memo, it can be handwritten, no particular format, to the associate warden of custody, indicating the specific problem and asking that it be investigated, hoping that it would be overruled, of course. The associate warden of custody, if it happened to be someone acting in his capacity, whoever is filling that capacity, would make this investigation and do whatever research necessary, then make a decision; one of two, either uphold the original decision or acknowledge the appeal and reverse it and send the letter out.

If he upholds the original decision not to send it out, he will indicate in writing to the inmate why he is making his decision, and at that point the inmate then

has recourse to the warden, then ultimately to the director, of course.

Q And in any event, whether he upholds or overturns the initial action, he will put it in writing, or just if he changes it?

A Yes. Although I have sat in that capacity many times as the reviewer myself, and in the past three years I never recall how a single incident how where an inmate has ever asked for an appeal, or have a letter go out that was returned to him. Certainly none of these were.

REDIRECT EXAMINATION

Q (By Mr. Turner) Is there any hearing at all comparable to a disciplinary hearing held when the inmate wants to take an appeal like that? A No.

MR. TURNER: I have nothing further.

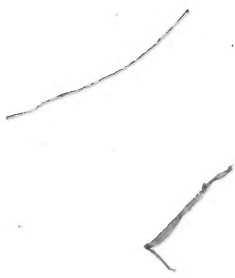
--oOo--

Plaintiffs' Ex #2
11-16-72

Moran,

You have been talked to several times about your mail. You will have to tone it down further for it to be acceptable. There are too many disrespectful comments and misrepresenting of facts.

H. Morphis



Plaintiffs' Ex #5
11-16-72

Ruiz,

You can't pass out misinformation, even if it is a quote from the paper.

I have been to the new unit and it is not designed for the type of program you imply.

H. Morphis

Filed: Dec. 1, 1972

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	No. C-71 543 ACW (Three-Judge Court) NOTICE OF MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the undersigned will move this Court, on the 22nd day of December, 1972, at 2:00 p.m. in Courtroom No. 7, or as soon thereafter as counsel can be heard, for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure. This motion is based upon the following:

(1) Plaintiffs' Requests for Admissions and defendants' responses thereto, heretofore filed in this action.

(2) Deposition of Raymond K. Procunier, November 16, 1972, with exhibits thereto.

(3) Deposition of Huel D. Morphis, November 16, 1972, with exhibits thereto.

(4) Deposition of Kenneth Warren Miranda, November 16, 1972, with exhibit thereto.

(5) Plaintiffs' Interrogatories and defendants' answers thereto, heretofore filed in this action.

(6) Affidavit of Alice Daniel, sworn to November 29, 1972.

(7) Affidavit of Robert Martinez, sworn to November 17, 1972.

(8) Affidavit of Paul A. Ellis, sworn to November 10, 1972, with exhibits thereto.

(9) Memorandum of Points and Authorities submitted herewith, and

all other papers and proceedings heretofore filed or had herein.

DATED: December 1, 1972.

WILLIAM BENNETT TURNER
Attorney for Plaintiffs

To: Evelle J. Younger, Attorney General
6000 State Building
San Francisco, California 94102
By: Thomas A Brady, Deputy Attorney General

On February 2, 1973, the Court filed a Memorandum Opinion denying Defendants' Motion to Dismiss and partially granting Plaintiffs' Motion for a Summary Judgment. This opinion was reprinted as Exhibit A to Appellants' Jurisdictional Statement, filed in this Court on April 28, 1973, and is hereby incorporated by reference. The opinion is published at 354 F. Supp. 1092.

EVELLE J. YOUNGER, Attorney General
of the State of California
EDWARD A. HINZ, JR., Chief Assistant
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filed Mar. 1, 1973
Charles J. Ulfers,
Clerk

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	No. C-71 543 ACW (Three-Judge Court)

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Raymond K. Procunier and Louis S. Nelson, the defendants above-named, hereby appeal to the Supreme Court of the United States from the

final order granting plaintiffs' motion for summary judgment, entered in this action on February 2, 1973.

This appeal is taken pursuant to 28 U.S.C. section 1253.

Dated: February 28, 1973

EVELLE J. YOUNGER, Attorney General
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DORIS H. MAIER, Assistant Attorney General - Writs Section
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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs,	NO. C-71 543 ACW
vs.	PLAINTIFFS' RESPONSE TO DEFENDANTS' PROPOSED REGULATIONS
RAYMOND K. PROCUNIER, et al., Defendants.	

In accordance with the Court's order of February 2, 1973, plaintiffs hereby file their responses to the proposed new rules of the Director of Corrections. These responses are based on the following: the annexed memorandum; the affidavits of Gordon Van Kessel,

Carol Golubock, John MacInnis and Jack H. Aldridge, annexed hereto; plaintiffs' alternative rule regarding authorized investigators, annexed hereto; and all papers and proceedings heretofore filed or had herein.

DATED: March 15, 1973.

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW PLAINTIFFS' RESPONSES TO DEFENDANTS' PROPOSED REGULATIONS

In accordance with the Court's order of February 2, 1973, plaintiffs hereby respond to the proposed new rules of the Director of Corrections. Plaintiffs urge that the Court disapprove the rules as written and order appropriate modifications, as follows:

I. Criteria For Disapproving Mail To Or From Inmates

This proposed rule is defective in the following respects:

1. Improper Criteria -- Clear and Present Danger

The rule authorized mailroom guards to disapprove a letter, either outgoing or incoming, if they think it "presents a clear and present danger" to prison security. This is an appropriate legal standard by which a court can judge the validity of a rule or act alleged to infringe the First Amendment. Indeed, this is one of the bases on which this Court invalidated the Director's Rules involved in this case. But this is not an appropriate standard to serve as the guideline for mailroom guards. It must be remembered that the censors here are not judges, or highly qualified public officials with sensitivity to legal restrictions on censorship; they are prison guards assigned to mailroom duty, their civilian helpers, members of the night watch or the officer in charge of a lock-up unit (Procunier dep., p. 15; Morphis dep., p. 4; Miranda dep., p. 15).

It is insufficient protection to the First Amendment interests recognized by the Court to authorize guards to decide subjectively what they think may pose a "clear and present danger to the security of the institution." In their untutored judgment they might well think that "statements critical of prison life and personnel" could present such a danger, even though suppression

of this kind of communication was explicitly condemned by the Court (slip op. p. 9). What is needed, as the Court said, is that "the regulations must be more narrowly and specifically drawn" (Id.). The regulation here must give concrete guidance to the censors, so that protected communications are not suppressed, mistakenly or not.

Supplying narrow and specific guidelines that meet the legal test of "clear and present danger" is not difficult. For example, in Guajardo v. McAdams, 349 F.Supp. 211, 221 (S.D. Tex.1972), the court, while completely enjoining censorship of outgoing mail, approved a rule authorizing censorship of incoming letters containing codes, threatening blackmail, escape plots, smuggling, plots to overthrow lawful authority, etc.[1/] The point is that the Director's Rule can, and must, provide very specific tests that are readily understandable to mailroom guards; the record here demonstrates that without such specificity, protected communications are sure to be suppressed. Further, one function of the state-wide rule ought to be promoting consistency. But entrusting individual guards with the responsibility for interpreting a difficult legal standard like "clear and present danger" can lead only to haphazard enforcement.

2. Improper Criteria-- Causing Psychiatric or Emotional Disturbance

The proposed rule bans incoming letters "which would cause a severe psychiatric or emotional disturbance to the inmate."

But mailroom guards are simply not qualified to make this judgment. We assume that defendants are concerned about the potentially disturbing effect of "Dear John" letters and the like. However, mailroom guards cannot be entrusted with the determination that a "severe psychiatric or emotional disturbance" will result from reading a letter. To the extent defendants' concern has any legitimacy, this determination should be made only upon certification of such danger by a professional psychiatrist; or the inmate's counselor could deliver the letter and provide appropriate counsel for the inmate.

1/ The text of the rule is as follows:

> "The following are reasons why a letter may be rejected: (a) it may contain threats, imply blackmail and/or extortion, forbidden goods, or information or plots to escape; (b) it may discuss criminal activities; (c) it may contain codes to circumvent understanding of contents; (d) it may contain plots to use overt action to overthrow lawful authority; (e) it may contain solicitation of personal property or funds. Enclosures such as newspaper clippings, and photographs of the inmate or his family which are purely personal are allowed." 349 F.Supp. at 221.

3. Criticism of Prison Life and Personnel

Because the record here is replete with instances of censorship of criticism of prison life and personnel, and this was forcefully condemned by the Court, we believe any proposed rule must necessarily admonish mailroom staff that they may not reject letters

on such grounds. Defendants should be required to adopt a specific rule to this effect.

1. Proper Criteria for Incoming Mail

If defendants have persuaded the Court that some censorship of incoming mail is required, we respectfully suggest that the only appropriate test for excluding incoming material is that contained in Cal. Penal Code S2600 for incoming published material -- whether the matter is "of a character tending to incite murder, arson, riot, violent racism, or any other form of violence." This test has the advantage of being familiar to prison officials and thus relatively easy to apply. It is a legislative judgment as to the only kinds of incoming material that pose any real threat to security.

II. Written Statement Of Reasons For Disapproval of Mail

The record indicates that defendants have until now used printed checklists for rejecting letters, with guards merely checking general categories and returning the letters to the inmate. This does not provide the type of "notice" required by fundamental fairness. Nor does it insure that the censoring guard will thoughtfully consider exactly what is objectionable and why. We respectfully suggest that the notice must specify the objectionable part or parts of the letter and explicitly state

why it must be rejected.

A further defect in this proposed rule is that it authorizes placing of "any material from letters" in inmates' files. This should not be permitted, for obvious reasons, unless the material falls within a properly censored category under the first proposed rule; this rule should so provide.

III. Appeal of Decision Disapproving Mail

The Court held that correspondents must be afforded "a reasonable opportunity . . .to contest a decision disapproving. . ." letters (slip op. p. 10). The proposed rule fails to specify how this may be done. It simply says that there may be an appeal "in accordance with institutional procedures." Whatever these "procedures" are, they apparently may vary from prison to prison or even within prisons. We believe defendants should be required to tell the Court exactly what the procedures are, so that they may be meaningfully evaluated. We further believe that the proposed rule must itself specify a minimum procedure in accordance with constitutional requirements. For example, in Clutchette v. Procunier, No. C-70 2497 AJZ (N.D. Cal.), the officials formulated a uniform state-wide plan for inmate discipline. Here, defendants could permit individual institutions to adopt more elaborate or detailed procedures, but they should be required to specify in the Director's Rule what minimum procedures are acceptable. Otherwise, there is sure to be a

multiplicity of litigation challenging the validity of individual prison procedures.

IV. Authorized Investigators

This proposed rule has several serious defects that completely undercut the Court's decision on access of law students and other paraprofessionals who assist attorneys:

1. Limitation to "Attorney of Record"

The rule limits access to persons working for and sponsored by "the attorney of record." This means there is no access except when there is litigation on file and the inmate is represented by an attorney. It excludes law student and paraprofessional assistance in two vital and common situations: (a) when inmates have legal problems that require counseling and investigation but no lawsuit; and (b) when an attorney has been requested to represent a prisoner but needs an investigator to gather information required for the attorney to consider such representation. In neither situation does the prisoner have an "attorney of record," yet in both situations his need for legal assistance is real. Defendants cannot justify this restriction.

This restriction and others in the proposed rule seriously handicap bona fide law student assistance programs like those at Hastings College of the Law and Stanford Law School. Annexed hereto as Exhibit A is the affidavit of Gordon Van Kessel, explaining

the defects in the proposed rule from the point of view of the Hastings program. Annexed hereto as Exhibit B is the affidavit of Carol Golubock, explaining the defects in the proposed rule from the point of view of the Stanford program.

2. Exclusion of Non-Student Paraprofessionals

The rule authorizes only attorneys, state-licensed investigators and certified law students to assist attorneys in interviewing prisoners. But the Court pointed out that access to the courts is enhanced by using "law students or other paraprofessionals" and also suggested possible use of "lay employees" of attorneys. The fact is that defendants have excluded a significant source of trained and qualified legal assistants. The San Francisco Bar Association has recently documented the growing use of non-student paraprofessionals to assist attorneys. Annexed hereto as Exhibit C is the Bar Association newsletter for March, 1973, containing a description of current developments in this field. Annexed as Exhibit D is the affidavit of John MacInnis, Associate Director of the California Public Interest Law Center at Lone Mountain College, describing a graduate program for training legal paraprofessionals. Annexed as Exhibit E is the affidavit of Jack H. Aldridge, Assistant Dean of Instruction at San Francisco City College, describing another paraprofessional training program.

Under defendants' rule all these trained and qualified legal assistants are barred. Yet as the Court pointed out, the American Bar

Association has expressly recognized the use of paraprofessionals. And the California State Bar now has under consideration studies on the proper use and training of paraprofessionals, and possible proposed legislation. See State Bar of California, Reports, June, 1972, p. 1.

Defendants have proved no possible justification for banning use of legal professionals and excluding these sources of legal assistants, and their rule must accordingly be modified.

3. Limitation to Certified Law Students

Defendants do not even permit all law students to serve as investigators. They propose a limitation to law students certified by the State Bar. This excludes all first-year students (regardless of background, training or maturity) and most second-year students. There may be justification for the State Bar to limit certification, because certified students are authorized, inter alia, to make court appearances. But there is no justification for requiring certification in order for a student, supervised by an attorney, to interview a prisoner. As the Court suggested, "bona fide law students under the supervision of attorneys" should be allowed to serve. Requiring State Bar certification does nothing to enhance prison security, but does exclude most of the law students in the state from providing needed legal assistance for prisoners.

As set forth in the affidavit of Gordon Van Kessel (Exhibit A hereto), excluding non-certified law students would virtually destroy bona fide law student programs. It may

be that programs using only certified students would be more ideal in terms of providing higher quality legal services, but the reality must be recognized that law school programs, with uncertified students, are still better than the alternative -- the jailhouse lawyer. Destruction of the present law student programs may not have been intended by defendants' proposed rule, but that is its effect.

4. Unspecified Procedures

The proposed rule requires the sponsoring attorney to file an "information form" and submit it "in accordance with institutional rules." Defendants do not tell the Court what must be in the information form and fail to specify what the institutional rules are. As in the case of censorship procedures (see p. 5, supra), defendants must formulate a state-wide rule that permits a meaningful evaluation by the Court and that specifies exactly what sponsoring attorneys and their investigators are required to do in order to have the benefit of the Court's decision. Otherwise, substantive and procedural limitations, imposed by individual institutions or officials, which may well emasculate the Court's decision, are certain to proliferate litigation.

5. Prior Notice of Visits

The proposed rule requires filing of an "information form" at least one week prior to every law student visit. Defendants do not say so, but we assume this is intended to allow time for a security check of the

student. This may be permissible for the student's first visit, but it is completely unjustified for subsequent visits. The lack of justification is especially obvious when there are subsequent visits to the same inmate and when there are litigation deadlines -- the rule makes no exception for meeting court deadlines. This rule's interference with bona fide law student programs is demonstrated by Exhibits A and B hereto.

6. The Attorney's "Responsibility"

The rule states in the broadest possible terms that "the attorney must accept responsibility in writing for the conduct of investigators acting on his behalf." No form of the "writing" is provided. We have no difficulty in accepting professional responsibility for the work of such investigators, as required by applicable Bar Standards. But it is unreasonable for defendants to hold attorneys "responsible" for all acts of their investigators, regardless of whether the acts are within the scope of the assignment or beyond the attorney's control. All that defendants can reasonably require is that the attorney state his belief in the assistant's moral integrity, as is customary in Bar admission matters.

* * *

Because of the many defects in defendants' proposed rule on authorized investigators, we have drafted an alternative rule, annexed hereto as Exhibit F.[2/] We believe

our alternative rule adequately protects the interests of all -- inmates, attorneys, law student programs, legal paraprofessionals and the prison system -- while accurately reflecting the Court's decision.

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2/ Our draft is intended to replace all of Rule MV-IV-02 (except paragraph 9, the "eavesdropping" paragraph).

CONCLUSION

For reasons stated, the Court should reject the proposed rules as written and order defendants to make modifications in accordance with the foregoing.

Respectfully submitted,

WILLIAM BENNETT TURNER

Attorney for Plaintiffs

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW AFFIDAVIT OF GORDON VAN KESSEL

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANISCO)

GORDON VAN KESSEL, being duly sworn, deposes and says:

1. I teach Advanced Criminal Procedure at Hastings College of the Law, San Francisco, California. I also head the clinical program in criminal law, and I am faculty adviser for the Hastings Indigent Criminal Appeals Program ("HICAP").

2. The HICAP program involves Hastings law students in criminal appeals and collateral remedies of persons convicted of crime. The program is wholly student-run, with minimal supervision. The students' activities include interviewing prisoners,

discussing with them legal points they desire to raise, clarifying legal issues, drafting legal pleadings and briefs, etc. The students render services to prisoners in several California prisons. The HICAP program does not require students to be certified in accordance with the rules of the State Bar.

3. If HICAP students were required to be so certified, it would be practically impossible to operate the program. In the first place, students cannot be certified under the State Bar rules unless they have completed at least three semesters or four quarters; this excludes all first-year students and many second-year students. Further, there are not attorneys available to provide the kind of supervision required by the State Bar. The State Bar requires supervising attorneys to have actively practiced law as a full-time occupation for at least two years. Even some law school professors cannot meet this requirement. Further, we could not find qualified attorneys who would be willing to spend the uncompensated time required to provide the careful supervision specified by the State Bar. Finally, the State Bar certification rules prohibit certified law students from giving legal advice except in the personal presence of the supervising attorney. This is not possible in the HICAP program, because there are no attorneys available to go to the prison with the law student for the purpose of conveying advice to the prisoner.

4. Further, limiting student assistants

to those assisting an "attorney of record" would seriously undermine the HICAP program. This is because much of the work of the students involves interviewing prisoners and investigating their claims, for the purpose of advising them whether such claims have any merit. In many cases, no litigation is filed and so there is no "attorney of record." Any rule limiting student access to prisoners on the ground that they are not assisting the "attorney of record" would eliminate this kind of preliminary legal assistance to prisoners that is necessary to sort out meritorious from frivolous claims.

5. Excluding uncertified law students from prisons, and limiting access only to those assisting an "attorney of record" would seriously diminish the effectiveness of the HICAP program. Further, I believe that such exclusion and limitation would significantly reduce available legal assistance for prisoners. Unfortunately, the only alternative for prisoners would then be the jailhouse lawyers. I believe that law student programs like HICAP are preferable to jailhouse lawyers from all points of view.

GORDON VAN KESSEL

Sworn to and subscribed before me,
this 13th day of March, 1973.

Notary Public

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al.,	)	
Plaintiffs,	)	
- v. -	)	No. C-71 543 ACW
RAYMOND K. PROCUNIER, et al.,	)	
Defendants.	)	

AFFIDAVIT OF CAROL GOLUBOCK

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA) ss.

I, CAROL GOLUBOCK, being duly sworn depose and say:

The Stanford Law School Chapter of the Law Students Civil Rights Research Council (LSCRRC) initiated a program of legal assistance to inmates of the Correctional Training Facility (CTF), Soledad, California, in February, 1972. The program was established as a result of an agreement among former Associate Superintendent Donnelly of the CTF, Associate Dean William Keogh of Stanford Law School, and the affiant, a student representative of the Stanford Chapter of LSCRRC.

The program began operation with a part-time volunteer staff of Stanford law students, all of whom were under the supervision of

David Kirkpatrick, an attorney with California Rural Legal Assistance in Salinas, California, and "bar-certified" pursuant to the Rules for the Practical Training of Law Students as promulgated by the California Bar Association. The volunteer students interviewed inmates upon written request of the inmates sent either to Mr. Kirkpatrick or directly to the students. After consultation with Mr. Kirkpatrick, the students provided legal advice to the inmates and assisted in instituting legal action whenever it was necessary and feasible to do so.

During the summer of 1972, the program continued with a staff of four students working full-time, funded on a subsistence basis by fellowships from the western regional office of LSCRRC.

In the fall of 1972, Stanford LSCRRC attempted to reinstate its school year program as it had operated during the winter and spring of 1972. There were approximately thirty students interested in working in the program, ten of whom were to interview inmates inside CTF, twenty of whom were to research legal issues arising in the interviews. Additionally, plans had been made to conduct legal classes inside CTF. The purpose of these classes was to improve the quality of the legal papers filed by inmates and to decrease the number of frivolous writs coming out of CTF.

However, the program was temporarily suspended by the Soledad officials in September, and cancelled in late November, 1972.

As an officer of the Stanford LSCRRC chapter, I have studied the rule proposed by the California Department of Corrections regarding attorneys' use of investigators and law students. I have also discussed the proposed rule with the other students in the LSCRRC program. On the basis of our experience as law students providing legal assistance to inmates at Soledad prison from February, 1972 to September, 1972, we have concluded that the rule as proposed would adversely affect our ability to provide adequate legal assistance to prison inmates in the following ways:

1. THE PROPOSED RULE REQUIRES THAT THE SPONSORING ATTORNEY BE THE "ATTORNEY OF RECORD".

The requirement that law students be sponsored by the "attorney of record" for an inmate would greatly reduce the number of inmates for whom the supervising attorney could provide legal assistance. Most of the interviews done under the LSCRRC program were undertaken for the purpose of providing Mr. Kirkpatrick, the sponsoring attorney, with preliminary information necessary for him to determine whether or not to become the attorney of record. This procedure allowed Mr. Kirkpatrick to devote his time to cases which required legal action. This screening process constituted a most valuable aspect of LSCRRC program, an aspect which would be eliminated by requiring the sponsoring attorney himself to determine if

he or she wished to become the attorney of record.

2. THE PROPOSED RULE REQUIRES THAT ALL INMATE REQUESTS BE SENT TO THE SUPERVISING ATTORNEY.

While the proposed rule would not totally preclude an attorney's use of certified law students, it would greatly and unnecessarily hamper the communications between the investigator and the inmate.

Once the LSCRRC program had been in operation for a few weeks, the inmates began to send their requests directly to Stanford LSCRRC or to a particular student rather than to the supervising attorney. After our program had been in existence for two months, approximately 75 percent of our interviews were undertaken on the basis of request directed to a certified law student. The LSCRRC program operated on this basis for about nine months with no objection ever being raised by the CTF administrators. This indicates that there is no substantial administrative purpose to be served by requiring that the request always be made to the supervising attorney.

The primary effect of the proposed rule in our situation would be to require the student/investigator to write back to the inmate telling him to direct all correspondence to the supervising attorney. This would delay the inmate's receiving legal assistance, particularly as extra time is involved in checking any mail in and out of a prison.

More importantly, the delay may cut off communications altogether. Many inmates have related to us the frustrations encountered and time consumed in appealing to attorneys and others for help with their cases. Often the inmates had written to their original attorneys, the convicting court and numerous legal groups before contacting us. By the time many reached us, they had given up hope of ever receiving aid. Disappointed by an endless series of referrals, many had decided to give up or proceed on their own. If we had answered their letters with yet another referral, they might have given up and not written the supervising attorney.

Even if the inmate follows through on this additional referral -- writing to the supervising attorney after having written to the student -- the subsequent relationship may well be hampered by the additional delay. This is the case particularly where the inmate's claim is without merit because it is difficult to convince him of this fact if he is not first convinced that the student has taken a true interest in him. Any lengthy delays in responding to the request for assistance are likely to make it difficult to establish a relationship of trust and to increase the difficulty involved in convincing the inmate that his claim is frivolous, if that is the case.

3. **THE PROPOSED RULE RESTRICTS ATTORNEYS' USE OF LAW STUDENTS TO THOSE WHO ARE CERTIFIED BY THE STATE BAR.**

While the LSCRRC interviewing program has always operated solely with certified law students, our experience indicates that this is not essential to the interviewing process. Bar certification under the Rules enables a law student, with three semesters completed, to appear in court and to draft legal papers subject to the supervising attorney's approval. Both of these matters may require some scholastic training. However, the interviewing of prisoners for the purpose of determining the facts of their cases does not require such training. Therefore, it appears reasonable that, in the interest of providing prisoners with legal help not otherwise available, an attorney should be entitled to delegate the interviewing tasks to any law student or legal paraprofessional with whose qualifications he is familiar and for whom he would be willing to assume professional responsibility.

Moreover, a student program may be hampered by the requirement that all the student/investigators be certified under the Bar Rules for the following reasons:

a. We have found very few attorneys who are willing to devote substantial amounts of time to the assistance of inmates. Those who are willing are limited by the Bar Rules to the supervision of ten students regardless of the amounts of time they and the students will devote to the assistance of inmates.

A supervising attorney may need certified law students in other areas of his practice. Thus, he will be limited to less than

ten students, although he may be willing to spend a substantial amount of time supervising students in a prison program. Student prison programs in other states have devised standardized procedures for students to follow that limit the amount of direct attorney supervision necessary.

The proposed rule thus serves to limit arbitrarily the number of students available to provide legal assistance to inmates.

b. There are very practical problems of recruitment and continuity in a student-run prison program. Certification requires the completion of three semesters of law school. Recruitment and training of qualified law students for the prison program can only take place in the middle of the school year when second-year students have already made commitments to jobs or other programs, or at the beginning of the school year when only third-year students are eligible. Most students can thus be recruited only at the beginning of their third year. Therefore, the effect of the certification requirement is that an enormous turnover of personnel occurs each fall, when inexperienced third year students enter the program to replace those who participated in the program the previous year but have graduated.

c. We have found there to be a great deal of enthusiasm for the prison program among first and second year students. While these students are fully capable of conducting "intake" interviews, and do so for other legal programs, they would be

delayed by the proposed rule from entering fully into the prison program until they have completed the first half of their law school career. The prison program often loses them to programs in which they can participate fully, programs which are more attractive for that reason.

4. THE PROPOSED RULE REQUIRES AN INFORMATION FORM TO BE FILED BY THE SPONSORING ATTORNEY FOR EACH STUDENT ONE WEEK PRIOR TO EACH VISIT.

The requirement that the attorney file an information form for each student on every occasion the student enters the prison appears unnecessary. For the LSCRRC program, CTF required only that Dean William Keogh attest to the qualifications of interviewing students before their first visit to Soledad. This initial information has been sufficient in the past to satisfy institutional security requirements.

The requirement that the institution be notified one week in advance of each visit is burdensome. The LSCRRC program at CTF operated on the basis of a three day notice requirement during the spring and summer of 1972. We found on occasion that even this much notice created problems for our program. The first, of course, was the inability to respond immediately to urgent requests for help.

But beyond this problem, a notice requirement creates several difficulties, which are endemic to a student program located at

school a substantial distance from the prison. First, law students are heavily burdened by academic commitments; it is often difficult to know even three days in advance whether or not it will be possible to devote the entire day necessary for a trip to Soledad (a round-trip of 200 miles) to interview prisoners.

Second, not all students have automobiles. In the past, it was necessary for our program on occasion to borrow cars to go to Soledad. Occasionally a trip to the prison was arranged and the phone call made to the prison, but car transportation subsequently became unavailable. An additional three-day delay was then mandated by the notice requirement. Students were not allowed to come the day following such an aborted trip. These postponements placed a strain on our relationships with inmates who had been counting on talking to a student on a particular day.

5. THE PROPOSED RULE REQUIRES THAT A LETTER FROM THE SUPERVISING ATTORNEY TO THE PRISON OFFICIALS BE PRESENTED BY THE STUDENTS ON EACH VISIT NAMING THE INMATES TO BE INTERVIEWED.

The LSCRRC program operated in the spring and summer of 1972 on the basis of an agreement with the officials at CTF that a telephone call from the students naming the inmates to be interviewed provided adequate information to the prison. The proposed rule imposes a burdensome administrative procedure. The students must insure that the supervising attorney, who is often located far from the

law school (David Kirkpatrick is 100 miles from Stanford), send the required letter to the students in time for the visit. If the attorney was in trial or for some other reason unavailable, the interview would have to be postponed until the attorney could be contacted despite the demands of an inmate's case. Any mistakes in a letter probably could not be corrected in time for the scheduled visit.

Any purposes served by requiring that the students present a letter from the attorney authorizing each visit would also be served by the less burdensome means of: 1) requiring that the attorney notify the institution of the names of his or her investigators before their initial interviews; and 2) requiring that the investigator phone the prison before each visit, informing officials of the names of prisoners who had requested assistance and bringing to the prison on the visit some evidence of the prisoner's request for services.

Dated at Palo Alto, California, this 9th day of March, 1973.

_____

Carol Golubock
For the Law Students Civil Rights Research Council
Prison Law Group

Subscribed and sworn to before me this 9th day of March, 1973.

_____

Notary Public
My commission expires:

EXHIBIT D

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW (Three-Judge Court) AFFIDAVIT OF JOHN MacINNIS

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

JOHN MacINNIS, being duly sworn, deposes and says:

1. I am the Associate Director of the California Public Interest Law Center at Lone Mountain College. My office is located at 2800 Turk Boulevard, San Francisco, California.

2. The program I direct is designed to train highly qualified legal paraprofessionals. A brochure describing the program is annexed hereto as an Exhibit.

3. Under the public interest advocacy part of the paraprofessional program, we now have about 15 students enrolled. Their average score on the Law School Aptitude Test is about 620. They are all college graduates and are full-time students in our graduate program. The program leads to a Master's degree in Legal Science. All of the students are expected to be placed in field study programs. In some of the programs, it is likely that they would deal with the problems of prisoners in California institutions.

4. We presently have enrolled in the complete paraprofessional program about 40 students. Not all of these are full-time. Many are employed by large law firms. This year, we had about 120 applicants for the program.

5. I am aware of other legal paraprofessional training programs in operation in the Bay Area. Specifically, there are programs at San Francisco City College, Merritt College in Oakland, and Dominican College in San Rafael.

6. Our program is based in part on the concept that needed legal services can greatly be expanded by the use of qualified and trained paraprofessionals assisting attorneys. This concept applies as well to prisoners needing legal services, and I believe that legal paraprofessionals trained in our program could perform useful services in this area.

JOHN MacINNIS

Sworn to and subscribed before me,
this 9th day of March, 1973.

Notary Public

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs,	NO. C-71 543 ACW (Three-Judge Court)
vs.	AFFIDAVIT OF DEAN JACK H. ALDRIDGE
RAYMOND K. PROCUNIER, et al., Defendants.	

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

JACK H. ALDRIDGE, being duly sworn, deposes and says:

1. I am the Assistant Dean of Instruction at San Francisco City College.

2. City College operates a complete program for the training of legal paraprofessionals. A description of our program is set forth in the brochure annexed hereto as an Exhibit. Our program includes several courses designed to equip legal paraprofessionals with the necessary skills for legal assisting, and the two-year program leads to an Associate of Arts degree. We expect to place graduates in law offices,

governmental agencies and business firms. Approximately 152 students are presently enrolled in our program.

3. As stated in the Exhibit hereto, our program is designed to aid the legal profession to meet the increasing demand for legal services and to provide those services more efficiently and with less delay through the use of legal assistants. I believe that trained legal assistants would also be fully qualified to assist attorneys in representing prisoners with their legal problems, and I believe that legal paraprofessionals trained in our program would perform useful services in this area.

DEAN JACK H. ALDRIDGE

Sworn to and subscribed before me,
this 13th day of March, 1973.

Notary Public

EXHIBIT F

PROPOSED RULE -- AUTHORIZED INVESTIGATORS

(A) The following persons will be permitted to interview an inmate with his consent during normal visiting hours, subject to institutional security regulations:

(1) an attorney who is counsel of record for the inmate in any legal matter, or who has been asked to represent or advise the inmate by either (a) the inmate, or (b) a member of the inmate's family or other person authorized by the inmate to seek legal assistance for him; and

(2) a designated representative of such an attorney.

(B) For the purposes of this rule:

(1) An "attorney" means any member of the State Bar, or any person whose appearance on behalf of the inmate has been filed in any court, by leave of the court.

(2) A "designated representative" means any of the following persons designated by the attorney to represent him in the matter of interviewing inmates:

(a) an investigator licensed by the State;

(b) a member of the State Bar;

(c) a student in good standing in any accredited law school;

(d) a legal paraprofessional employed by the attorney.

(3) An attorney may designate a representative or representatives by a written letter of authorization which shall be dated and shall be effective for one year from its date unless it expressly specifies a shorter period of authorization. The letter may authorize its addressee to represent the attorney in interviewing a named inmate or inmates, or in interviewing any class of inmates or all inmates whom the attorney himself may interview. Second or successive letters of authorization may be issued during or after the effective periods of earlier letters. The letter or a facsimile of it bearing the original or a photocopy of the attorney's signature shall be presented to the authorities of the institution at their request, together with a motor vehicle operator's license or other document sufficient to identify the bearer as the person designated in the letter, before an attorney's designated representative is admitted to an institution to interview an inmate.

(4) Unless the attorney is counsel of record for an inmate, the authorities of the institution may also request proof that the attorney has been asked to represent or to advise the inmate, before admitting either the attorney or his designated representative to the institution to interview the inmate. Presentation of a letter or an envelope addressed to the attorney or to his designated representative,

bearing inmate's name in the return address, shall be sufficient proof for this purpose, and the contents of the inmate's letter shall not be required to be disclosed.

(5) An inmate may ask an attorney to represent or to advise him by a letter addressed either to the attorney or to the attorney's designated representative, asking for the assistance of either the attorney or the representative.

(C) (1) When an attorney's designated representative is a law student or a legal paraprofessional and has not been admitted to a particular institution under this Rule during a period of six months prior to the date on which he seeks to interview an inmate, the attorney shall mail to the institution, at least one week prior to the proposed interview, a completed copy of the following information form:

_____

_____

_____

In addition to other information specified by the defendants in the body of this Rule and reasonably necessary to assure institutional security, the form may include the attorney's representations that:

(1) the attorney is satisfied that the character of the designated representative is good; and

(2) the attorney agrees to assume responsibility for the professional performance of the designated representative.

(2) Except as provided by the preceding paragraph, the authorities of an institution shall not require any other or different notice of the visit of an attorney's designated representative for the purpose of interviewing an inmate than would be required for the attorney himself.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	CASE NO. C-71 543 ACW (Three-Judge Court) ORDER REGARDING PROPOSED REGULATIONS AND GRANTING A FURTHER STAY

The Court, having received plaintiffs' response to defendants' proposed regulations, orders that defendants file a reply thereto on or before April 9, 1973. Prior to filing of said reply, the Court orders that counsel for plaintiffs and defendants discuss the proposed regulations and objections so that any areas of agreement may be incorporated in defendants' reply. Plaintiffs should submit further alternative proposals covering any issues left unresolved by defendants' reply.

The Court's order of February 2, 1973 is stayed pending further order of this Court insofar as it enjoins enforcement of the current regulations.

Dated: March 21, 1973

Ben C. Duniway
U. S. Circuit Judge

Alfonso J. Zirpoli
U. S. District Judge

Albert C. Wollenberg
U. S. District Judge

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW (Three-Judge Court)

PROPOSED REGULATIONS (Revised)

In accordance with this Court's order of March 21, 1973, and in light of Plaintiffs' written and oral responses to defendants' proposed regulations filed in this Court on March 1, 1973, the following new regulations

of the Director of the Department of Corrections are submitted for the Court's approval:

CORRESPONDENCE

A. Criteria for Disapproval of Inmate Mail

1. Outgoing Letters

Outgoing letters from inmates of institutions not requiring approval of inmate correspondents may be disapproved for mailing if the content falls as a whole or insignificant part in any of the following categories:

a. The letter contains threats.

b. The letter threatens blackmail or extortion.

c. The letter concerns sending prohibited material into or out of institutions.

d. The letter concerns plans to escape.

e. The letter concerns plans for activities in violation of institutional rules.

f. The letter concerns plans for criminal activity.

g. The letter is in code and its contents are not understood by the reader.

h. The letter solicits gifts of goods or money from other than immediate family.

i. The letter is obscene.

j. The letter contains information which otherwise presents a clear

and present danger to the security of the institution.

Outgoing letters from inmates of institutions requiring approval of correspondents may be disapproved for any of the foregoing reasons, or if the addressee is not an approved correspondent of the inmate and special permission for the letter has not been obtained.

2. Incoming Letters

Incoming letters to inmates may be disapproved for receipt for any of the foregoing reasons, if the letter contains material which would cause severe psychiatric or emotional disturbance to the inmate, or in an institution requiring approval of inmate correspondents, is from a person who is not an approved correspondent and special permission for the letter has not been obtained.

3. Limitations

Disapproval of a letter on the basis that it presents a clear and present danger to the institution and which is not disapproved for another of the authorized reasons will be done only at the program administrator or higher level.

Disapproval of a letter on the basis that it would cause severe psychiatric or emotional disturbance to the inmate will be done only by the inmate's

caseworker, after consultation with institutional psychiatric personnel if that is deemed appropriate in the particular case.

Outgoing or incoming letters may not be rejected solely upon the ground that they contain criticism of the institution or its personnel.

4. Notice of Disapproval of Inmate Mail

When an inmate is prohibited from sending a letter, the letter and a written and signed notice stating one of the authorized reasons for disapproval and, if appropriate, reference to the portion of the letter requiring disapproval, will be given the inmate. If an inmate is prohibited from receiving a letter, a written and signed notice stating one of the authorized reasons for disapproval and, if appropriate, reference to the portion of the letter requiring disapproval, will be given the inmate and the sender, and the letter will be returned to the sender.

If copies of any material from letters are placed in an inmate's file, the inmate will be notified of the action in writing.

B. Investigators

Investigators for an attorney of record must be licensed by the state, must be

members of the State Bar, or be law students certified under the State Bar Rules for the Practical Training of Law Students and sponsored by the attorney of record. Designation must be in writing by the attorney of record.

If it is proposed that a certified law student serve as an investigator, the sponsoring attorney must complete and file an information form in accordance with institutional rules for the purpose of obtaining identifying information about the student. Such form must be filed at least one week prior to the initial proposed confidential visit by the law student on behalf of the attorney. For each visit, the law student must present a letter signed by the sponsoring attorney of record naming the inmate or inmates to be interviewed by the law student, and the interviews will be limited to those inmates only. When a law student has been properly authorized to act on behalf of an attorney, he will be granted the privileges of the attorney. The attorney must accept responsibility in writing for the conduct of investigators acting on his behalf.

These rules are not intended to apply to law student assistance programs operating pursuant to agreements between the

Department of Corrections and various law schools. Such programs must be operated in accordance with the individual agreements.

DATED: April 23, 1973

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EDWARD A. HINZ, JR., Chief Assistant Attorney General -- Criminal Division
DORIS H. MAIER, Assistant Attorney General--Writs Section
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	No. C-71 543 ACW (Three-Judge Court)

APPENDIX

The following paragraphs deal with areas in which it is felt that the parties are in substantial agreement, but in which defendants have not deemed it necessary to reflect that agreement in specific new regulations:

1. Appeal Procedure

Plaintiffs' responses to defendants' initial proposed regulations were deficient in failing to specify the mechanics of the procedure for appealing a decision disapproving the mailing or receipt of a letter. The general revision of the Director's Rules will contain a provision concerning the right to administrative review of all grievances (other than grievances concerning the disciplinary process and the Adult Authority hearing procedure, which are treated separately). It is submitted that this general appeal provision suffices to allow for review of an adverse decision concerning correspondence, without unduly lengthening the Director's Rules.

2. Definition of Attorney of Record

Plaintiffs criticize the proposed regulations on the ground that it limits access to persons working for and sponsored by an "attorney of record" on the ground that it does not cover situations where no lawsuit is on file or contemplated. Other rules, however, define this term without so restricting it. All that is required is agreement between the inmate and the attorney for the visit and the formation of an attorney-client relationship.

3. Student Information Form

Plaintiffs complain that the requirement that the sponsoring attorney file an information form might lead to the

imposition of imposition of other restrictions not contemplated in the Court's opinion. Defendants have not included a proposed form in the Director's Rules for reasons of brevity only. Attached is a draft of a proposed form to be used for this purpose. We submit that this form is unobjectionable.

DATED: April 23, 1973

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EDWARD A. HINZ, JR., Chief Assistant Attorney General--Criminal Division
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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW PLAINTIFFS' RESPONSE TO DEFENDANTS' REVISED PROPOSED REGULATIONS

In accordance with the Court's order of March 21, 1973, plaintiffs respond as follows to the revisions of the regulations proposed by defendants:

A. Criteria For Disapproval of Inmate Mail

The revised regulation is no improvement over defendants' first regulation, and is in violation of the Court's decision. The Court held that contents of letters cannot be prohibited unless they constitute a clear and present danger to institutional security. Defendants' new rule, however, prohibits numerous kinds of expression that do not constitute a clear and present danger to anything and are not without the ambit of the First Amendment. See, e.g., categories (a), (e) and (h).[1/] Even advocacy of force or law violation cannot be proscribed "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Bradenburg v. Ohio, 395 U.S. 444, 447 (1969); cf. Noto v. United States, 367 U.S. 290, 297-98 (1961); Yates v. United States, 354 U.S. 298 (1957). The revised rules, however, proscribe speech that does not even constitute advocacy of anything illegal.

Further, the revised rules share all the defects of vagueness of the rules held

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1/ Since violation of correspondence rules is itself a disciplinary offense, category (e) creates, through punishment of speech, a violation of institutional rules where one has not yet been committed. A regulation that fails to distinguish between expression, or even advocacy, and imminent lawless action is invalid. See Brandenburg v. Ohio, 395 U.S. 444, 447-49 (1969); cf. Yates v. United States, 354 U.S. 298 (1957).

unconstitutional by the Court. For example, category (a) prohibits "threats". Of what? A threat to file suit against the officials can be construed to violate this rule, as can other kinds of innocuous expression deemed "threats" by mailroom guards. Similarly, what is "prohibited material" outlawed by category (c)? The revised rules, like the original rules, force prisoners to risk guessing at what is prohibited speech or to forego expressing their true thoughts; and they provide insufficient guidance to mailroom guards to sort out protected from proscribed expression. They lack the narrow specificity required of speech regulations. See Keyshian v. Board of Regents, 385 U.S. 589, 604, 609 (1967); Dombrowski v. Phister, 380 U.S. 479, 487 (1965); see generally Note, Prison Mail Censorship and the First Amendment, 81 Yale L. J. 87, 94-104 (1971).

Finally, the "revised" rule still contains a catchall category, category (j), that outlaws anything that might present a "clear and present danger", without any specificity. This can easily swallow all other reasons and suppress protected expression. This provision is defective for all the reasons stated in our Responses to the earlier proposed regulations (see pp. 2-3). The defects are not cured by the provision that this category can be invoked only by

prison personnel at the "program administrator" or higher level. This is insufficient protection for the rights involved. For example, Mr. Morphis, who has disapproved a great number of inmate letters for the most unconstitutional reasons, is a program administrator (Morphis dep., p. 3). It is well settled that the "lodging of such broad discretion in a public official," even a mayor or chief of police, impermissibly "allows him to determine which expressions of view will be permitted and which will not." Cox v. Louisiana, 379 U.S. 536, 557-58 (1965); cf. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

There are still other unjustifiable provisions in the regulations:

1. Defendants continue to provide that an incoming letter is prohibited if it "contains material which would cause severe psychiatric or emotional disturbance to the inmate." Defendants now say that such a letter will be disapproved only by the inmate's caseworker (after consulting with psychiatric personnel only "if that is deemed appropriate"). We submit that this is not a permissible basis for disapproving a letter that otherwise would have constitutional protection. Defendants have never explained why this provision is required. 2/ Only if the "psychiatrist or

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2/ It seems silly that a man whose wife or girlfriend has announced her intention to leave him must forever be kept in the dark about this fact, but this is the result of defendants' proposed rule, which bars the prisoner from getting the news.

emotional disturbance" is likely to result in violence or escape would there be a clear and present danger to security. Accordingly, if defendants wish to prohibit letters that might disturb inmates, they must include a provision specifying the likelihood of imminent violence or escape, and must further provide that this determination can only be made upon written certification by a qualified psychiatrist.

2. Defendants' proposed "notice of disapproval of inmate mail" is still defective. The notice would only inform the inmate of the objectionable part of the letter if someone deemed it "appropriate". The objection at p. 4 or our earlier Responses still applies.

3. Defendants still insist that they may place letters or material from letters in an inmate's file (which the record shows is available to classification committees and the Adult Authority in considering parole) even though the material or letters do not violate any applicable rules. This is one of the chilling actions explicitly complained about in this suit and noted by the Court (slip op. p. 6-7). In the discussion between counsel directed by the Court, defendants took the position that (1) anything the Department of Corrections can legally "see" it can legally put in an inmate's file; and (2) no court decisions bar the Department from placing any material whatever in an inmate's file. The Court should firmly reject this position, for exercise of the rights recognized by the Court's decision (e.g. to criticize prison

life or personnel) will surely be discouraged. Constitutionally protected expression in letters cannot, consistently with the Court's decision, be placed in an inmate's file for possible later use against him.

4. Finally, defendants still have not told the Court what the appeal procedure will be when an inmate wishes to contest the decision disapproving his correspondence. Defendants' "Appendix" states the procedure will be uniform for all kinds of grievances. Plaintiffs have no objection to a uniform procedure, but we do maintain that defendants must inform the Court and counsel what the procedure is so that it may be evaluated.

Because of the numerous defects that defendants' revised rules still contain, we have drafted proposed rules on mail censorship, including criteria and appeal procedures, and we submit them herewith.3/

3/ Our proposal provides, inter alia, that contents concerning present or planned criminal activity may be prohibited if the activity would be in violation of Penal Code. This is in accordance with a recent decision by Judge Peckham specifying that jail rules generally can create offenses only if the conduct violates the Penal Code. See Batchelder v. Geary, ___ F. Supp. ___, No. C-71 2017 RFP (N.D. Cal. April 16, 1973).

B. Investigators

Defendants' revised rules on investigators contain almost all of the defects of the earlier rules. Thus, they completely bar all paraprofessionals other than law students. This is impermissible for the reasons stated in our earlier Responses at pp. 6-7. The revised rules further limit law students to those certified by the State Bar. This is impermissible for the reasons stated in our earlier Responses at pp. 7-8. The Court must recognize that the simple formality of certification by the State Bar provides no protection whatever to the Department of Corrections (no security check is involved); defendants' rule simply has the effect of eliminating one-half of the law students in the state from assisting prisoners.[4/]

4/ Defendants' statement that the revised rules "are not intended to apply" to formal law student programs (which may utilize non-certified students) demonstrates that defendants have no legitimate interest in requiring certification since, as our earlier Responses showed (pp. 7-8 and affidavits of Gordon Van Kessel and Carol Golubock), the programs provide little or no supervision and defendants do not do any security checks. Nor does defendants' new disclaimer of effect on existing programs protect against their arbitrary destruction at any time, as apparently happened to the Stanford program (Golubock affid., p. 2).

Nor does the statement in defendants' "Appendix" defining an "attorney of record" cure the defects stated in our earlier Responses at pp. 5-6. We submit that all that can be required for an attorney's investigator to interview a prisoner is that there be a written request from the prisoner to the attorney for legal assistance. Defendants cannot justify requiring an "agreement" between the inmate and the attorney and "the formation of an attorney-client relationship." In very many cases, a busy attorney would have occasion, when requested by a prisoner, to send an investigator to help the attorney decide whether there is anything to the inmate's case, before making any "agreement" with the prisoner or bringing about "the formation of an attorney-client relationship" (see affidavits of Alice Daniel, Gordon Van Kessel, Carol Golubock).

Finally, defendants continue to require that the attorney accept "responsibility" for the conduct of investigators acting on his behalf. We disagreed with this open-ended responsibility in our earlier Responses. Defendants' submission of the law student "Information Form" with their revised rules has fully confirmed our fears. The "Information Form" requires the attorney to certify in writing that he accepts "full responsibility for the student's compliance with public laws and with the rules of the institutions visited." This is truly outrageous. No careful attorney would ever sign such a form. If the student were ever charged with any kind of misconduct,

the attorney signing the form would be subject to unknown, unspecified and possibly serious criminal and other sanctions.[5/] The form can only have been designed to frustrate and limit the rights to broader legal assistance recognized by the Court's decision. As we stated in our earlier Responses at p. 9, attorneys may be required to accept professional responsibility for the student's work, and to vouch for the student's moral character, but defendants cannot justify requiring the attorney to accept unlimited "responsibility" for whatever a student might do.

CONCLUSION

For the reasons stated herein, and in our earlier Responses, we urge the Court to disapprove defendants' proposed regulations and to order the adoption of the regulations submitted by plaintiffs.

5/ Indeed, in the discussion between counsel directed by the Court, defendants informed counsel for plaintiffs that, although not specified by the rule, defendants would bar the attorney from further visits if a student assistant had offended prison regulations.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW PLAINTIFFS' PROPOSED RULES ON MAIL CENSORSHIP

I. Criteria For Disapproving Mail To Or From Inmates

Outgoing letters from inmates in institutions not requiring approval of inmate correspondents may be disapproved for mailing only if the content concerns present or planned

criminal activity in violation of the Penal Code (including smuggling contraband and escape), is obscene or is in code designed to circumvent understanding of its contents.

Outgoing letters from inmates of institutions requiring approval of correspondents may be disapproved only for the foregoing reasons or if the addressee is not an approved correspondent of the inmate and special permission for the letter has not been obtained.

Incoming letters to inmates may be disapproved for receipt only if the content concerns present or planned criminal activity in violation of the Penal Code (including smuggling contraband and escape), is obscene or is in code designed to circumvent understanding of its contents; or, in an institution requiring approval of inmates' correspondents, a letter may be disapproved if it is from a person who is not an approved correspondent and special permission for the letter has not been obtained.

Sending and receiving letters is not a privilege but is a right of inmates that cannot be interfered with except that a specific letter may be disapproved if its contents are in violation of the foregoing rules.

II. Criticism Of Prison Life And Personnel

In no event can any letter, incoming or outgoing, be disapproved on the ground that the contents criticize prison life or personnel, are "defamatory" of prison personnel

or "magnify grievances" of inmates.

III. Written Statement of Reasons For Disapproval of Mail

When an inmate is prohibited from sending a letter, the letter and a written and signed notice stating the reason for disapproval will be given the inmate. If an inmate is prohibited from receiving a letter, a written and signed notice stating the reason for disapproval will be given the inmate and the sender, and the letter will be returned to the sender. In both instances, such notice shall not be a simple checklist but shall be an individual reason specifying the objectionable part or parts of the letter and explicitly stating why it is disapproved. Such notice shall also specify the procedure for appealing the disapproval in accordance with Rule (IV) below.

Copies of any material from letters, or the letters themselves, may not be placed in an inmate's file unless the contents are disapproved in accordance with Rule (I) above, and unless the inmate is accordingly notified in writing of such action as required above.

IV. Appeal of Decision Disapproving Mail

An inmate has a right to appeal disapproval of any outgoing or incoming letter. Any person whose letter to an inmate is disapproved also has a right to appeal. Each institution shall adopt detailed procedures

governing such appeals but, at a minimum, the appeal process shall include the following:

(1) The official to whom a disapproval may be appealed shall not have disapproved the letter in question and shall not have had any connection with or previous knowledge whatever of the disapproval.

(2) The inmate and, in the case of a disapproved incoming letter, the sender, shall have the right to appear before the official hearing the appeal and to have a reasonable opportunity to contest the decision disapproving the letter. Written notice of this right shall be given the inmate and the sender a reasonable time before the hearing.

(3) The decision on appeal shall be made in writing and shall specify the reasons therefore and the evidence relied upon. If the decision is adverse to the inmate or sender, the written decision shall be given to the inmate and sender and shall include instructions as to how an appeal may be taken directly to the Director.

Respectfully submitted,

WILLIAM BENNETT TURNER
Attorney for Plaintiffs

ORIGINAL
FILED

MAY 30, 1973

CLERK, U.S. DIST.
COURT, SAN FRANCISCO

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

- - - - - - -

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et at., Defendants.	CASE NO: C-71 543 ACW ORDER RE PROPOSED NEW REGULATIONS

BEFORE: DUNIWAY, U. S. Circuit Judge; and ZIRPOLI and WOLLENBERG, U. S. District Judges

After the filing of the Court's memorandum opinion in this case, now published at 354 F.Supp. 1092, defendants submitted a first set of proposed regulations. Plaintiff submitted many objections to the proposals, and the Court ordered that counsel for the parties confer to identify those issues upon

which substantial agreement exists, and those upon which the Court must rule. Defendants' proposed regulations (revised) were submitted on April 23, 1973. Plaintiff has submitted an additional memorandum setting forth his remaining objections, and offered an alternative set of proposals.

The Court, having reviewed defendants' proposed regulations submitted on April 23, 1973, and the objections thereto, hereby approves said regulations subject to the following limitations:

(1) The Court believes that in light of the present text of Rule 2401, to wit, "the sending and receiving of mail is a privilege, not a right . . ." defendants should adopt a statement summarizing the Court's holding in this case in lieu of Rule 2401. The Court suggests the following:

> "Sending and receiving letters is not a privilege but is a right of inmates that cannot be interfered with except that a specific letter may be disapproved if its contents are in violation of the following rules."

(2) The Court is prepared to approve paragraph A(1), Criteria for Disapproval of Inmate Mail--Outgoing Letters, subject to the following modifications:

a. The present text of sub-paragraph (a) is vague and overbroad. This language must either be deleted entirely, or made specific. If defendants elect to retain this provision, an acceptable modification would be "The letter

contains threats which are themselves violations of criminal laws."

b. Use of the term "prohibited material" makes sub-paragraph (c) vague and overbroad. This language must be either deleted or modified. If defendants elect to retain this provision, an acceptable modification would substitute "physical contraband" for "prohibited material."

c. The prohibition contained in sub-paragraph (h) is unjustifiably narrow. The Court approves retention of sub-paragraph (h) provided the word "immediate" is deleted therefrom.

d. The Court finds that sub-paragraph (j) is subject to all of the constitutional deficiencies raised by the enjoined regulations. It must, therefore, be deleted in its entirety.

In addition to the specific objections set forth above, the Court finds that the intent of paragraph A(1) will be more clearly set forth by inserting the word "only" after the phrase "may be disapproved for mailing only if the content".

The Court similarly finds that the intent of paragraph 2, Incoming Letters, will be more clearly set forth by inserting the word "only" and deleting the words "any of", so that the paragraph reads: "Incoming letters to inmates may be disapproved for receipt only for the foregoing reasons, or[1/] if the letter contains material . . . ."

1/ The word "or" has been inserted for grammatical clarity only.

The Court has no further objection to paragraph 2, provided that paragraph 3 is modified in the manner discussed below.

(3) Paragraph 3, Limitations, may be modified by omitting the first sentence in light of the Court's ruling that paragraph A(1) (j) must be deleted. The Court finds that the second sentence, which provides a limitation to the application of paragraph 2, must be substantially modified to comply with the Court's holding that regulations restricting First Amendment rights must be at least reasonably and necessarily related to a justifiable state interest. The Court finds no constitutional objection to paragraph 2, provided that the limitation in paragraph 3 is modified to comply with the standards set forth in the following language:

> "Disapproval of a letter on the basis that it would cause severe psychiatric or emotional disturbance to the inmate will be done only by a licensed psychiatrist after consultation with the inmate's caseworker. The psychiatrist must find that the inmate's disturbance is likely to affect prison discipline or security, or the inmate's rehabilitation, and that there is no reasonable means of ameliorating the disturbance of the inmate without censoring the letter."

(4) The Court is prepared to approve paragraph 4 provided that the following modifications are made:

a. The qualifications "if appropriate", which appear twice, must be deleted. For purposes of grammatical clarity, the Court recommends the following language:

"a. When an inmate is prohibited from sending a letter, the letter and a written and signed notice stating one of the authorized reasons for disapproval and, indicating the portion of the letter requiring disapproval will be given the inmate.

b. If an inmate is prohibited from receiving a letter, a written and signed notice stating one of the authorized reasons for disapproval and indicating the portion of the letter requiring disapproval will be given the sender, and the letter will be returned to the sender. The inmate will be given notice in writing that a letter has been rejected, indicating one of the authorized reasons and the sender's name."

b. The provision implying that material from letters may be placed in an inmate's file is, on its face, overbroad in that it does not give the inmate any notice of what may be placed in his file or how it may be used. (See 354 F.Supp. at 1096) Nor is the inmate given an opportunity to contest the use of such material for disciplinary or other purposes. For these reasons, the threat of copying inmates letters for prison purposes constitutes an unjustified restriction on First Amendment rights.

The defects of overbreadth, lack of notice, and chilling effect inherent in defendants' proposal may be cured by the adoption of specific standards limiting the kinds of materials that may be placed in an inmate's file or used against him in disciplinary proceedings, plus an opportunity for the inmate

to contest such use of his correspondence. Inclusion of the following language would satisfy the Court's objections:

> "c. Material from correspondence shall not be placed in an inmate's file unless it violates one of the provisions of paragraph 1. If copies of any material from letters are placed in an inmate's file, the inmate will be notified of the action in writing and given an opportunity to contest said action in the manner set forth in subparagraph (d)."

c. Defendants' Appendix to their proposed regulations indicates their intention to apply a general right to administrative review of inmate grievances to mail censorship decisions. A copy of "Proposed Rules and Regulations of the Director of Corrections, March 23, 1973 Draft" has been provided to the Court. Paragraph DP-1003 provides as follows:

> "RIGHT TO ADMINISTRATIVE REVIEW OF GRIEVANCES
>
> "Each inmate has the right to appeal decisions or conditions affecting his or her welfare. Each institution head must provide a system whereby an inmate may request and receive administrative review of any problem or complaint. Such review will involve upper level staff and will insure that the complaint receives timely, courteous and considerate attention. The institutional appeal procedure will apply to all areas of complaint except the disciplinary process and the Adult Authority hearing process, each of which has a special appeal or review procedure."

If Paragraph DP-1003 is incorporated in paragraph 4 of the new regulations,

whether by reference or otherwise, the defendant will have complied with the minimum standards set forth by the Court in its opinion. See 354 F.Supp. at 1097. The Court recommends that the relevant portions of DP-1003 be set out in sub-paragraph 4 (d).

Defendant's proposed regulation labeled "B. Investigators" must be modified as follows:

(1) Defendants' failure to include paraprofessionals constitutes an unreasonable restriction on inmates' right of access to the courts. No justification has been shown, and none occurs to the Court, for excluding a reasonably defined class of paraprofessionals. A satisfactory definition is included in the suggested language set out below.

(2) The term "attorney of record" should be defined. Incorporation of Proposed Rule DP-2705 (attached hereto as Appendix A) by reference would satisfy this requirement.

(3) Defendants' contemplation in the proposed regulation, and the form submitted in the appendix thereto, that attorneys using students or paraprofessionals as investigators must accept responsibility "for the student's compliance with public laws and with the rules of the institutions visited" or "for the conduct of investigators acting on his behalf" is a vague, overbroad threat. General principles of agency and vicarious liability for criminal actions of others will, of course, apply to investigators. But the defendants' use of language in the

proposed regulations and the appended form does more than state the relationship between the general body of law and prison regulations. If defendants elect to require that sponsoring attorneys accept responsibility for their agent in writing, then the extent of responsibility so accepted must be limited to responsibility for acts taken within the scope of the agency created.

The Court recommends that defendants' proposed regulation be modified to read as follows:

B. Investigators

Investigators for an attorney of record must be (1) licensed by the state, (2) must be members of the State Bar, (3) must be law students certified under the State Bar Rules for the Practical Training of Law Students and sponsored by the attorney of record, or (4) must be paraprofessionals who, for the purposes of this rule, are persons regularly employed by the attorney of record to do legal and quasi-legal research on a full-time basis. Designation must be in writing by the attorney of record. For the purposes of this rule, an "attorney of record" is defined in Department of Corrections Rule DP-2705. If it is proposed that a certified law student or paraprofessional serve as an investigator, the sponsoring attorney must complete and file an information form provided by the institution for the purpose of obtaining identifying information about the student or paraprofessional. Such form must be filed at least one week prior to the initial proposed confidential visit by the

law student or paraprofessional on behalf of the attorney. For each visit, the student or paraprofessional must present a letter signed by the sponsoring attorney of record naming the inmate or inmates to be interviewed by the student or paraprofessional, and the interviews will be limited to those inmates only. When a law student or paraprofessional has been properly authorized to act on behalf of an attorney, he will be granted the privileges of the attorney. The attorney must accept responsibility in writing for acts taken within the scope of the agency created. These rules do not apply to law student assistance programs operating pursuant to agreements between the Department of Corrections and various law schools. Such programs must be operated in accordance with the individual agreements.

Defendants shall have twenty (20) days to submit proposed regulations in accordance with this Order.

Dated: May 30, 1973

United States Circuit Judge

United States District Judge

United States District Judge

SUPREME COURT, U.S.

SUPPLEMENT TO APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72–1465

RAYMOND K. PROCUNIER, Director, California Department of Corrections, et al,

Appellants,

vs.

ROBERT MARTINEZ, et al,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

APPEAL DOCKETED April 28, 1973

PROBABLE JURISDICTION NOTED June 18, 1973.

EVELLE J. YOUNGER
Attorney General of the State of California

EDWARD A. HINZ, JR.
Chief Assistant Attorney General—Criminal Division

DORIS H. MAIER
Assistant Attorney General—Writs Section

ROBERT R. GRANUCCI
Deputy Attorney General

THOMAS A. BRADY
Deputy Attorney General

6000 State Building
San Francisco, California 94102
Telephone: (415) 557-3628

Attorneys for Appellants.

DOCKET ENTRIES

EXHIBITS TO COMPLAINT

EXHIBIT A

FOLSOM STATE PRISON

Notice of Special Disposition - Inmate Mail

This Letter Is Returned for the Reason(s) Checked Below:

__ Not an approved correspondent. Submit CDC 105 if you desire to correspond. __ Hold letter for approval of application.
__ Full Mail Card, removal necessary before addition.
__ Cannot go sealed, see Rule D-2404.
__ This party has been removed from your approved list.
__ Your quota of twenty(20) letters per month is exhausted.
__ Improper stationary. __ Write on one sheet, both sides.
__ Put your correct name and number in upper left envelope corner.
__ Put your name and number and the relationship of the person addressed on the underside of the flap. __ Not approved.
__ Not considered a business letter. __ Needs official approval.
__ Asking for money. __ Cannot request sample items of free literature.
__ Criticizing policy, rules or officials.
__ Mentioning inmates by name or number or relating Institutional gossip or incidents.
__ Write in English. Spanish permitted to parents and wives only.
__ Cannot go registered or certified. (See Rule D-2402-10.)
__ No legal documents may go to approved correspondents.
__ Use stamped envelopes to pay for your postage, withdrawal slips for legal postage only.
__ Funds in your trust account prohibit free mailing.

__ Your quota of free mail for this month is exhausted.
__ Cards cannot go postage-free or to non-approved correspondents.
__ Hobby cards must be approved by Handicraft Manager.
__ .....
.....
.....

This Letter Is Being Delivered to You, But the Following Special Instructions Must Be Followed or Future Mail May Be Returned.

__ Not an approved correspondent. You may answer this one letter only if you submit your reply along with a completed CDC 105 requesting approval.
__ Notify this party to use your correct number and/or address.
__ Notify this party to place his name and return address on the envelope.
__ Excessive lipstick smears. One print is enough.
__ .....
.....
.....

Exhibit A is a form used to notify prisoners that their letters have been disapproved under the Rules complained of herein.

EXHIBIT B

CALIFORNIA MEDICAL FACILITY

G.C. HERRICK C/O WOOD, LEE B-36205
INMATE BEHAVIOR (Magnifying grievences)

D-1201 Tuesday, January 25, 1972 1:45 P.M.

At approximately 1:45 P.M. during a routine check of Inmates traveling in the Main Corridor, I found WOOD B-36205, to be carrying on his person, a hand written letter addressed to Dr. Ruddle and Dr. Lunde. Writers of these doctors are members of CMF staff. This letter consisting of three (3) pages, magnifying out of proportion the treatment and reason for such treatment that WOOD is currently receiving.
The letter was placed in the Custody evidence locker.

G.C. HERRICK, Correctional Officer
Medium #211, Search and Escort Officer
1/73 Refered to La March Unit Lt,s court, per Lt. J.L. Steele, 2/W Commander.

cm P-261 INMATE Canteen la March (C)MEDIUM

Exhibit B is a disciplinary report that a prisoner violated Rule 1201, Inmate Behavior by "magnifying grievances" in a letter.

EXHIBIT C

December 6th, 1971

American Civil Liberties Union
593 Market Street
San Francisco, California 94105

Dear Mr. Halvonik,

This is in reply to your letter of 11-29-71 concerning Cresencio Valdez.

I have personally returned letters to Valdez with "nct approved for mailing" written on them. Some of my staff or I may have written "Racial Bullshit" across one letter as you claim. If we did, this is not professional and will not be done in the future, although this is apparently what the contents amounted to or it would not have been referred to in such manner.

Departmental and Instutional regulations do not permit inmates to write material that is discriminatory or derogatory towards individuals or races. Any such letters will be returned to Valdez in the future. The reason the letters were marked on was to prevent him from re-submitting them in their same content, as ome inmates do over and over.

All Valdez has to do to get mail out to Mrs. Mason is to write letters of decent content. I am not aware that he has been denied the privilege of writing to her.

I trust this adequately answers the questions you raised.

Sincerely,

W.E. Craven
Warden

H.D. Morphis
Program Administrator

cc: Central File
AWC File
A/C File

Exhibit C is a letter to an attorney explaining why prison officials refused to mail a prisoner's letter.

EXHIBIT D

November 3, 1971

Ms. Alice Daniel
Legal Defense Fund
12 Geary Street
San Francisco, Ca., 94108

Dear Ms. Daniel: Re: _____

In response to your letter of October 29, re. Inmate I submit the following:

1. Only one disciplinary report was submitted - that of June 23, 1971. It is now in the file, with evidence attached for the information of the Adult Authority;
2. No disciplinary action was taken against Inmate for writing his mother. However, because of what appears to be his propensity for falsification and half-truths, it certainly is our duty to call this kind of attitude to the attention of the Adult Authority; they may consider it a serious matter, or totally disregard it, which, of course, is their prerogative.

A copy of the letter in question is also in Inmate file, for the attention of the Adult Authority.

Sincerely yours,

L. S. NELSON,
Warden.

LSN:h

Exhibit D illustrates the referral of a prisoner's letter to the Adult Authority. The name of the prisoner, who is also discussed in Exhibit E, has been omitted, but will be furnished to the Court upon request. He is now on parole, although his release was postponed because of this letter.

EXHIBIT E

November 12, 1971

Miss Alice Daniel
Legal Defense Fund
12 Geary Street
San Francisco, Ca., 94108

Dear Miss Daniel: Re: _____

I am responding to your letter of November 3, 1971, in regard to the above-named inmates.

I have previously written you relative to Leroy Deary and have only this to add: was identified as"an aggressive, revolutionary leader," on the basis of a letter he wrote to his mother shortly after the incident on August 21, 1971. This letter apparently contained unfounded, vicious rumors about the incident; hence, for the safety of the institution and its personnel, was ordered confined. If the Adult Authority does not reinstate his parole in their hearings next week, his case will be reviewed on or about December 15, for consideration of release from the control unit, transfer, or other program.

(THE OMITTED PORTION OF THIS LETTER DISCUSSES A MATTER COMPLETELY UNRELATED TO THE SUBJECT OF THIS LAWSUIT.)

I wish that I had the time to review the cases of all men placed in segregated units. Unfortunately, because of press of correspondence concerning such cases, I am unable to do more than either refer for handling by members of my staff, or personally reply summarily.

Very truly yours,

L. S. NELSON,
Warden.

LSN:h

Exhibit E discusses a prisoner's assignment to segregation and loss of parole because of statements contained in a letter to his mother.

EXHIBIT F

Examiner - 6/27/71

30-DAY STAY

COURT RULE DOESN'T

AID CON -- YET

by Stephen Cook

The young black San Quentin inmate opened the door to the guard's office beside the tiers in B Section, the penitentiary's disciplinary quarters, and confronted prison justice.

There were four white faces, attached to coats and ties. One offered a tentative smile. The others were expressionless. One of them spoke: "Sit down, please, Jones (not the inmate's true name). This is a disciplinary committee. You were referred here because on June 20, you were charged with violating Department of Corrections Rule D1201 - possessing and writing militant material, a letter."

The speaker was Prison Captain Donald Weber, chairman of the committee. Others in the room were Associate Warden John Apostol, Correctional Counselor Jerry Golden, and Dr. Luther Grider, a prison psychologist.

Panther Paper

Captain Weber told Jones that a guard had charged Jones with possessing and writing a letter which, it appeared, was intended for the editor of the Black Panther Newspaper.

Jones name was typed, but not signed, at the bottom of the offending letter, which referred to Warden Louis S. Nelson as "a fascist" and a "white racist pig" and boasted of the ease with which Black Panthers were able to attent recent Soul Day festivities at the prison by posing as entertainers.

"How do you plead - guilty or not guilty?" asked the captain.

Deprived of Rights

At this point, Jones was being deprived of his constitutional rights, according to a ruling this week by U.S. District Judge Alfonso J. Zirpoli.

The judge ruled Tuesday that San Quentin's disciplinary hearings are unconstitutional and permanently enjoined prison officials from conducting further hearings without safeguarding the rights of accused inmates.

Jones disciplinary hearing was conducted three days later, on Friday. Judge Zirpoli's order included a 30-day stay of execution to allow prison officials to appeal.

Rights

If he had been protected by the judge's ruling, Jones would have been entitled to adequate notice of the charge against him, the right to cross-examine the guard who charged him, the right to call favorable witnesses, the right to a lawyer or a lawyer substitute, the right to have his case heard by someone not involved in the incident, the right to a written finding of fact and the right to appeal.

As it was, Jones enjoyed only some of those rights.
He was allowed no counsel. The accusing guard was not present for cross-examination. Jones was allowed no witnesses on his own behalf. He was allowed only to speak for himself.

Jones pleaded not guilty. He admitted having the letter, but not writing it.

'Not Easy'

"It's not an easy question," said Associate Warden Apostol after the inmate had closed the door. "We're talking about a piece of paper."
"Jones is very convincing," said Weber. The captain also pointed out that Jones had been in isolation four days already, pending a hearing on the charge.

Dr. Grider suggested the sole issue before the committee was the "militancy" of the letter.

"Is it inflammatory? He called Warden Nelson a fascist. I don't think that's inflammatory, myself," said the psychologist.

"You don't think calling the warden a white racist pig is militant? I wouldn't want to be called that," said Weber.

"I think of violence as militant," said Apostol. "I guess someone's going to have to define the word militant. I can't get very excited about this letter."

"How much of this stuff do we close our eyes on," asked Golden. "This guy knows better. He's pretty bright. He could have said all that in the letter, but said it in a different way. He didn't have to call the warden a racist pig."

In the end, the committee deadlocked 2-2 with Golden and Weber holding for conviction.

Exhibit F is a newspaper account of a disciplinary proceeding against an inmate accused of "processing and writing militant material, a letter."

EXHIBIT G

February 17, 1972

Warden Louis S. Nelson
California State Prison
San Quentin, California 94964

Dear Mr. Nelson:

Robert Martinez, B-7417, has filed a complaint in the Federal District Court (C-71 543 ACW). Judge Wollenberg, to whom the case was assigned, has asked me to consider representing Mr. Martinez in his case. In order to evaluate the case properly and to obtain necessary information, a personal interview would be most helpful, and perhaps essential. Unfortunately my own schedule will not permit me to visit Mr. Martinez for quite some time. Therefore I request that you permit my assistant Joel Mark to interview him for me. Mr. Mark is a third year student at the Hastings School of Law. Thank you for your consideration in this matter.

Very truly yours,

Alice Daniel

AD:lj

EXHIBIT H

February 23, 1972

RE: MARTINEZ, Robert
B-7417

Miss Alice Daniel
Legal Defense Fund
12 Geary St.
San Francisco, Ca. 94108

Dear Miss Daniel:

Your letter of February 17, 1972, to Warden Nelson regarding the above named inmate and indicating you might be assigned his case by Judge Wolleberg has been referred to me for reply.

We could arrange an interview if advised that you had been assigned to this case in the usual manner and would do so at your convenience.

As to another person visiting in your behalf, this could not be arranged as our visiting arrangements for attorneys does not include this privilege at this institution.

Very truly yours,

L. S. NELSON, Warden

J. R. O'Brien
Information Officer

JRO'B:ajr

It was subsequently discovered that plaintiff MARTINEZ had been transferred to the Southern Conservation Center at Chino, California prior to the date of this letter, which San Quentin officials later explained had been sent without checking their files. The policy it expresses is of course equally applicable to plaintiff EARLEY.

EXHIBIT I

March 8, 1972

Lieutenant Ames
Rainbow Camp
Box 200, Route 2
Fallbrook, California 92028

Dear Lt. Ames:

Robert Martinez, B-7417, has filed a complaint in the Federal District Court (C-71 543 ACW). Judge Wollenberg asked me to consider representing Mr. Martinez in his case, and after writing to Mr. Martinez and discussing it with him on the telephone, I have agreed to do so.

At this point a personal interview would be most helpful, and perhaps essential in order to determine the relevant facts needed to file an amended complaint. Unfortunately the great distance between my office and your Camp makes it almost impossible for me to visit Mr. Martinez myself. Therefore I request that you permit my assistant Joel Mark to interview him for me. Mr. Mark is a third year student at the Hastings School of Law. If your rules do not permit student assistants to visit, it may be possible for me to arrange for another lawyer to visit Mr. Martinez in my place. Please advise me as soon as possible whether you will permit either a law student or another lawyer to interview Mr. Martinez for me. Thank you for your consideration in this matter.

Very truly yours,

Alice Daniel

AD:lj

EXHIBIT J

March 16, 1972

RE: MARTINEZ, Robert
OUR: B-7417

Legal Defense Fund
NAACP Legal Defense & Educational Fund, Inc.
12 Geary St.
San Francisco, California 94108

Attention: Alice Daniel

Your request regarding the personal interview of Robert Martinez by Mr. Mark cannot be approved under Departmental policy.

Only registered investigators or Attorneys are permitted.

If arrangements for another attorney are worked out by your office, it is suggested you contact Camp Rainbow regarding the date of your interview, as the Forestry Crews work six days a week and generally in remote sections of the county.

If alerted to the date of interview, Martinez will be maintained at the camp.

Respectfully,

R. D. Briggs
Program Administrator,
Camps

RDB:md

cc: Lt. Ames

EXHIBIT K

March 8, 1972

Warden Walter E. Craven
California State Prison
Represa, California 95671

Dear Mr. Craven:

I am the attorney of record for Robert Jordan in a case now pending in the California Supreme Court (#15734). Mr. Jordan has asked me to represent him in another matter as well. However a personal interview with him will be necessary in order to determine the facts of that case. Unfortunately my schedule will make it almost impossible for me to visit Mr. Jordan for quite some time. Therefore I request that you permit my assistant David Newman to interview him for me. Mr. Newman is a third year student at the Hastings School of Law. Thank you for your consideration in this matter.

Very truly yours,

Alice Daniel

AD:lj

Exhibits K and L pertain to a prisoner who is not a named plaintiff in this case, although he is a member of the class. They show that the statewide prohibition against para-professional visits is enforced at Folsom State Prison.

EXHIBIT L

March 13, 1972

Ms. Alice Daniel
Legal Defense Fund, NAACP
12 Geary Street
San Francisco, California 94108

Dear Ms. Daniel:

Subject: Robert Jordan, B-24196

The Warden has asked me to reply to your letter of March 8, 1972, concerning Mr. Robert Jordan.

I have checked with the Visitors Processing Office and find that at no time has Mr. Jordan filled out an Attorney of Record application designating you as his Attorney of Record. At this time he has a number of attorneys of record, but has never taken the necessary steps to include your name among them.

With regard to your request to have a law student represent you, as you know, it is against Departmental policy for anyone to conduct business with an inmate on behalf of an attorney of record, with the exception of a California State licensed investigator. This must be accomplished by means of a letter from the attorney of record, in advance of the investigator's visit, designating him as such in a letter addressed to the Warden. An attorney of record may designate not more than two investigators to represent him in dealing with an inmate.

Sincerely,

WALTER E. CRAVEN,
Warden

J. L. Moore, Warden's
Administrative Assist.

AFFIDAVITS IN SUPPORT
OF MOTION FOR
SUMMARY JUDGMENT

WILLIAM BENNETT TURNER
LOWELL JOHNSTON
JULIAN J. FOWLES
12 Geary Street
San Francisco, California 94108
Telephone: (415) 788-8736

FILED:
Dec. 1, 1972

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and Educational Fund, Inc.
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San Francisco, California 94102
Telephone: (415) 626-6196

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW AFFIDAVIT OF ALICE DANIEL

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

ALICE DANIEL, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court. I am also a member of the Bar of the states of California and New York, several District Courts, several Circuit Courts of Appeals and the Supreme Court of the United States. I am Associate Professor of Law at Hastings College of the Law. From July, 1970, to July, 1972, I served as Assistant Counsel for the NAACP Legal Defense and Educational Fund, Inc., in San Francisco, California. Before that, I was a Teaching Assistant at Columbia Law School and worked three years in criminal appellate practice for the Legal Aid Society of New York.

2. In early 1972, I was requested by the Honorable Albert C. Wollenberg to consider representing plaintiff Martinez in this case. Mr. Martinez had filed his complaint pro se. I agreed to investigate the case and to consider representing Mr. Martinez if the case presented important issues. At the time, I was being assisted by Joel Mark, a third year student at Hastings College of the Law. I believed Mr. Mark to be an able law student and a person of good character. He was very helpful to me in doing legal and factual research and in generally performing duties under my supervision.

3. On February 17, 1972, I wrote to defendant Nelson, explaining that I had been asked to consider representing plaintiff Martinez and requesting permission for Mr.

Mark personally to interview Mr. Martinez. A true and correct copy of my letter to defendant Nelson is annexed as Exhibit G to the Amended Complaint.

4. I requested my law student assistant personally to interview plaintiff Martinez, because my own schedule made it very inconvenient to take the time to go to the prison for the purpose of a personal interview. Even though San Quentin was relatively close to San Francisco, as compared to other much more remote California prisons, it was my experience that trips to the prison involved a good deal of waiting, delay and a single interview could easily occupy most of a working day. Of course, interviews at more remote prisons, where substantial travel was necessary, involved very substantial amounts of time away from the office.

5. I was refused permission to have my law student assistant interview Mr. Martinez, based solely on the rule prohibiting interviews by non-licensed assistant to attorneys. Annexed as Exhibit H to the Amended Complaint is a true and correct copy of the prison officials' response to my request for an interview by my assistant.

6. When plaintiff Martinez was transferred to another institution, much more remote from San Francisco, I again sought permission to have my assistant interview Mr. Martinez. Annexed as Exhibit I to the Amended Complaint is a true and correct copy of

my letter requesting such permission. Again, permission was refused because of defendants' rule permitting only licensed investigators or attorneys to interview prisoners. A true and correct copy of the prison officials' response is annexed as Exhibit J to the Amended Complaint. Preparation of this case was hindered and delayed because "interviews" had to take place by mail, with numerous queries and responses, in order to obtain essential information.

7. In connection with another case, I also sought permission to have a law student assistant interview a prisoner for whom I was attorney of record. This time the assistant was David Newman, another third year student at Hastings College of the Law. Mr. Newman, like Mr. Mark, had been very helpful in assisting me with legal and factual research, and I believed him to be a person of good character. I wrote for permission to have Mr. Newman interview my client at Folsom Prison. A true and correct copy of my letter is annexed as Exhibit K to the Amended Complaint. Again, permission was refused on the basis of the rule prohibiting interviews by para-professional assistants to attorneys. A true and correct copy of the letter refusing permission is annexed as Exhibit L to the Amended Complaint.

8. It was my experience in handling California prisoners' cases that personal interviews were extremely important in eval-

uating a prisoner's case, in deciding whether to represent the prisoner and in preparing for litigation. However, because of the remoteness of California institutions from my office, and the amount of time consumed in traveling to and waiting at the institutions, I was reluctant personally to spend the amount of time necessary for personal interviews. I believe that law student assistants acting under my supervision and pursuant to my direction could have performed very valuable services to the prisoners and to me. The inability to make use of such law student assistants, because of the prison rule absolutely prohibiting prisoner interviews by them, worked real inconvenience and tended to discourage me from undertaking more prisoner cases. I received a very large number of pleas for assistance from California prisoners, and would have liked to have assisted more, but the inability to use para-professional assistants was a factor inhibiting greater representation of California prisoners.

9. While serving as Assistant Counsel for the NAACP Legal Defense Fund, I also had occasion to speak regularly with other attorneys whose organizations or practice permitted them to represent California prisoners on a non-compensated volunteer basis. The consensus was that the inability to use law students in screening

cases was a real handicap in effectively representing prisoners. Further, it was virtually impossible to persuade private attorneys to undertake representation of indigent prisoners. Besides the fact that such attorneys would not be compensated, the inordinate amount of time required to interview clients was a factor, I believe, in deterring greater representation of California prisoners.

10. I have had several conversations with student participants in prisoner legal assistance programs in California prisons carried on at Boalt Hall and the University of Santa Clara School of Law. Such students are permitted to participate in such programs without any academic or security clearance. As a general matter, these programs are supervised very loosely and only rarely does a particular attorney assume personal responsibility for overseeing the assistance given to each prisoner "client". On the other hand, regarding the law students I supervised the Rules for Practical Training of Law Students of the California State Bar were followed. Such rules require that a lawyer "supervise no more than ten students concurrently" and "assume personal responsibility for any work undertaken by the student while under his supervision."

ALICE DANIEL

Sworn to and subscribed before me,
this 29th day of November, 1972.

Notary Public

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Attorneys for Plaintiffs

FILED:
Dec. 1, 1972

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al.,
Plaintiffs,
vs.
RAYMOND K. PROCUNIER, et al.,
Defendants.

NO. C-71 543 ACW

AFFIDAVIT

STATE OF CALIFORNIA)
COUNTY OF SOLANO) ss.

PAUL A. ELLIS, being duly sworn, deposes and says:

1. I am presently confined in the California correctional institution at Vacaville, California.

2. On September 13, 1972, I wrote a letter to William Holdsworth, a friend with whom I am permitted to correspond. In the letter I expressed some annoyance with the officials at this institution, who have returned letters to me because I have not used a particular kind of paper. It was and is my impression that the officials do not uniformly require the CDC-116 paper and that supplies of such paper are short.

3. A true copy of my letter to Mr. Holdsworth is annexed hereto as Exhibit A. I submitted the letter through normal prison channels for mailing, properly addressed and with proper arrangements for postage.

4. Shortly after submitting the letter, the letter was returned to me by the prison mailroom, accompanied by an institutional form stating that the letter had been rejected because it was deemed "offensive" by the officer in the mailroom. A true copy of the mailroom form is annexed hereto as Exhibit B.

PAUL A. ELLIS

Sworn to and subscribed before me,
this 10th day of November, 1972.

Notary Public

EXHIBIT A

Name Paul A. Ellis

Box No. 2000: L 169

Date SEPTEMBER 13, 1972

Hi Bill:

Thanks for your letter of September 8, 1972. I received a ntoice from the mail room that it was okay to write to you.

Please do not send me anything. You don't owe me a thing. All I would appreciate that you do is to be sure you pay back Mildred and Mary -Okay.

I am very happy to hear that you are doing so good. I let the following people read your letter: Mr. Boldt, Mike & Bert, John D., Archie, Mark, Ed M. etc.

Yep, I sure do enjoy those picnic visits now. I get them with Mary, Lu & Idella, Mildred.

Thanks for the picture. Looks like you lost some weight???????

Who is your friend to the right????

Sounds like you are making good money. Are you living alone now or still living with a friend?

You are very optimistic about my board appearance. I will only be taking them a year and a half. They consider me a 'looser' so I will be here for quite some time. Besides how can they rehabilitate an innocent man. They got a big problem there.

Glen went out on parole. He stayed the first week with the Bunges. He is now an assistant manager of a store in San Jose. The Bunges went to visit him at work. He spends almost every weekend with them. They really took to each other. Jerry M. is doing okay now. Old Gus finally went out to San Francisco.

Ray W. at the Protestant Chapel got a date. Going gome before Christmas. John D and Ray said to say hello.
After my postboard if I stay here or find out where I will be going I might let you get me a subscription to a PENTHOUSE. But let me find out first what is happening. If I get transferred they do not transfer the magazines and I would not get it.

You are doing great work in the L.A. area with kids. Did Mary tell you what pictures she loaned you that she did not have copies of. If so would you be sure to send her back copies (you could get them made). I don't want to lose our only copies.

Things haven't changed here much. The only great improvement for me is that I go outside the prison walls on my visits.

We still take the same old bull- from the cops and staff.

Twice this week I have gotten back letters from the mailroom because I did not use CDC 116 paper. Yet when I ask the wing bull for writing paper he hands me plain paper and tells me to put my own heading on it. Then I use it because I can't get the other stuff and get my letters back. I got one back that I sent Chuck, one to Mary and one to Luella and today one from Ellen. I paid a pack of cigs to get some CDC 116 from a guy that still had some so hope this makes them happy. I wish the State would buy some CDC paper so that we can have enough to mail our letters on. The most important thing we have is our correspondence and mail and they have to harass even that. I guess they get their kicks that way. But you should know you lived with it for years.

Any time you put human beings over other human beings with total POWER they become POWER MAD and sadistic.
They will do anything to cause another human

being discomfort or frustration. Probably saves them the price of going to a cheap prostitute for their kicks.

Be sure in your talks to kids that you stress what BS they will have to take from the guards when they come into a place like this. IT IS PART OF THE PUNISHMENT.

I am thinking of writing to Faye Stender the civil rights lawyer to see if she can take a class action to stop the institution from holding up our mail for petty reasons.

Why does the high brass always put the most malicious people in places of responsibility?

It never seems to fail. They put the decent guys in the wings and the misfits in the mailroom or custody offices.

Well this is enough for the first letter.

Keep up the good work.

best wishes

POWER TO YOU BILL.....

Paul

P. S.

Is your phone number

213-469-3213

or

213-469-3219

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Filed 7/16/73

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	No. C-71 543 ACW (Three-Judge Court)

PROPOSED REGULATIONS (Second Revision)

In accordance with this Court's order of May 30, 1973, the following new regulations of the Director of the Department of Corrections are submitted for the Court's approval:

CORRESPONDENCE

A. Criteria for Disapproval of Inmate Mail

1. Outgoing Letters

Outgoing letters from inmates of institutions not requiring approval of

inmate correspondents may be disapproved for mailing only if the content falls as a whole or in significant part into any of the following categories:

a. The letter contains threats of physical harm against any person or threats of criminal activity.
b. The letter threatens blackmail mail or extortion.
c. The letter concerns sending contraband in or out of the institutions.
d. The letter concerns plans to escape.
e. The letter concerns plans for activities in violation of institutional rules.
f. The letter concerns plans for criminal activity.
g. The letter is in code and its contents are not understood by reader.
h. The letter solicits gifts of goods or money from other than family.
i. The letter is obscene.
j. The letter contains information which if communicated would create a clear and present danger of violence and physical harm to a human being.

Outgoing letters from inmates of institutions requiring approval of correspondents may be disapproved only for the foregoing reasons, or if the addressee is not an approved correspondent of the inmate and special permission for the letter has not been obtained.

2. Incoming Letters

Incoming letters to inmates may be disapproved for receipt only for the foregoing reasons, or if the letter contains material which would cause severe psychiatric or emotional disturbance to the inmate, or in an institution requiring approval of inmate correspondents, is from a person who is not an approved correspondent and special permission for the letter has not been obtained.

3. Limitations

Disapproval of a letter on the basis that it would cause severe psychiatric or emotional disturbance to the inmate may be done only by a member of the institution's psychiatric staff after consultation with the inmate's caseworker. The staff member may disapprove the letter only upon a finding that receipt of the letter would be likely to affect

prison discipline or security or the inmate's rehabilitation, and that there is no reasonable alternative means of ameliorating the disturbance of the inmate.

Outgoing or incoming letters may not be rejected solely upon the ground that they contain criticism of the institution or its personnel.

4. Notice of Disapproval of Inmate Mail

   a. When an inmate is prohibited from sending a letter, the letter and a written and signed notice stating one of the authorized reasons for disapproval and indicating the portion or portions of the letter causing disapproval will be given the inmate.

   b. When an inmate is prohibited from receiving a letter, the letter and a written and signed notice stating one of the authorized reasons for disapproval and indicating the portion or portions of the letter causing disapproval will be given the sender. The inmate will be given notice in writing that a letter has been rejected, indicating one of the authorized reasons and the sender's name.

c. Material from correspondence which violates the provisions of paragraph one may be placed in an inmate's file. Other material from correspondence may not be placed in an inmate's file unless it has been lawfully observed by an employee of the department and is relevant to assessment of the inmate's rehabilitation. However, such material which is not in violation of the provisions of paragraph one may not be the subject of disciplinary proceedings against an inmate. An inmate shall be notified in writing of the placing of any material from correspondence in his file.

d. Administrative review of inmate grievances regarding the application of this rule may be had in accordance with paragraph DP-1003 of these rules.

B. Investigators

Investigators for an attorney of record must be (1) licensed by the State, (2) members of the State Bar, (3) law students certified under the State Bar Rules for the Practical Training of Law Students and sponsored by the Attorney of record, or (4) legal paraprofessionals certified by the State Bar

or other equivalent legal professional body and sponsored by the attorney of record. Authorization for an investigator to act for an attorney of record must be in writing and filed with the institution to be visited.

The provisions of Policy DP 2705 defining attorneys of record shall apply to this paragraph. If an investigator is to be a certified law student or certified legal paraprofessional, the sponsoring attorney must complete and file an information form provided by the institution for the purpose of obtaining identifying information about the student or paraprofessional. Such form must be filed at least one week prior to the initial proposed visit by the law student or legal paraprofessional on behalf of the attorney. For each visit, the law student or legal paraprofessional must present a letter signed by the sponsoring attorney of record naming the inmate or inmates to be interviewed by the student or paraprofessional, and the interviews may be limited to those inmates only. When a law student or legal paraprofessional has been properly authorized to act on behalf of an attorney, he will be granted the privileges of the attorney. The attorney must accept responsibility in writing for acts committed by the law student or legal paraprofessional in the course of acting on behalf of the attorney.

These rules do not apply to law student assistance programs operating pursuant to agreements between the Department of Corrections and law schools; such programs must be operated in accordance with the individual agreements.

DATED: July 16, 1973

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al.,	)	
Plaintiffs,	)	No. C-71 543 ACW
vs.	)	(Three-Judge Court)
RAYMOND K. PROCUNIER, et al.,	)	
Defendants.	)	

APPENDIX

The following comments are submitted in explanation of the attached proposed regulations:

(1) Defendants submit that in light of the fact that former Rule 2401 has been completely eliminated from the Director's Rules, and the fact that the new rules permit disapproval of inmate mail only under the conditions specified therein, the right to receive and send other mail is stated with sufficient clarity.

(2) Defendants submit that the language of subparagraph 1(j) is necessary to prevent the transmission of information which, although it may not constitute a direct threat of physical harm to a person or of criminal activity, is of such a nature that it could lead to violence or physical harm if communicated to a third person. Examples of such information include the naming of informants or exhortation of others to criminal activity.

(3) Paragraph 4(c), dealing with the circumstances under which material from correspondence may be placed in an inmate's file attempts to delineate between correspondence which may be the subject of disciplinary proceeding and/or disapproval for transmission and correspondence which may not be the subject of such action. The latter category of correspondence includes "positive" correspondence, which may be indicative of the inmate's efforts at rehabilitation, such as attempts to find employment, or "neutral" material such as material indicating psychiatric disturbance which would be relevant to a medical diagnosis. Limitation of correspondence which may be placed in an inmate's file to material which may be the subject of disciplinary proceedings, would result in the exclusion of other material

which is relevant to the Department of Corrections broader function of rehabilitation of inmates assigned to it.

DATED: July 16, 1973

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FILED:
July 18, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	NO. C-71 543 ACW (Three-Judge Court) PLAINTIFFS' RESPONSE TO DEFENDANTS' PROPOSED REGULATIONS (SECOND REVISION)

Plaintiffs respond as follows to the Second Revision of defendants' proposed regulations. Without waiving any of their previously stated objections, plaintiffs here address only the points on which defendants' regulations are in conflict with the Court's order of May 30, 1973:

A. Criteria For Disapproval of Inmate Mail

1. Defendants have ignored the Court's direction that defendants adopt in a regulation a statemement summarizing the Court's holding to the effect that correspondence is not a privilege but is a right (Order of May 30, p. 2). Defendants' Appendix to the Second Revision attempts to excuse this omission on the ground that Rule 2401 has been eliminated and that the new rules permit disapproval of inmate mail only under specified conditions. However, we believe that the Court's direction is sound and must be obeyed; because of the history of violation of First Amendment rights that gave rise to this lawsuit, an explicit direction to mailroom guards, rejecting the "privilege" approach, is clearly needed.

2. In paragraph A(1)(c), defendants have disregarded the Court's direction to substitute the phrase "physical contraband" (Order of May 30, p. 2). This omission is apparently designed to authorize the suppression of words which some mailroom guard may consider "contraband". This has been the previous approach of the Department of Corrections. Thus, in In re Jordan, 7 Cal. 3d 930, 500 P.2d 873 (1972), the Department argued that "verbal contraband" could be censored in attorney mail. But the California Supreme Court rejected the notion that words can in any way be considered contraband and

held that the term "contraband" must be limited to physical matter. We believe that the Court should adhere to its order. We believe that any legitimate security interests are more than adequately protected by the other provisions that the Court has approved. For example, if a letter concerned a plan for escape, defendants are authorized to suppress it by paragraph A(1)(d). Defendants have not attempted to explain why they have departed from the Court's direction, and there is no conceivable legitimate basis for their attempt to ban words as opposed to physical contraband.

3. In flagrant violation of the Court's order of May 30, defendants have included subparagraph (j) retaining the "clear and present danger" provision rejected by the Court. In their Appendix, they attempt to explain this by stating that under this provision they might prevent "naming of informants or exhortation of others to criminal activity." The latter is covered by the plain language of paragraph A(1)(f), so subparagraph (j) is superfluous for that purpose. It is difficult to imagine how the former--naming of informants--would arise. That is, defendants have not explained why or how or to whom an inmate might impermissibly name some informant in a letter. If in fact this would present a real danger to prison security, plaintiffs would not object to a pro-

vision explicitly stating that prisoners cannot name confidential informants in letters. In short, defendants have demonstrated no need whatever for the overbroad provision that they have submitted in violation of the Court's order.[1/]

4. Regarding letters that might cause a psychiatric disturbance, instead of complying with the Court's explicit direction that disapproval be done by a "licensed psychiatrist," defendants have provided that this be done by a member of the institution's psychiatric staff. We do not know whether this means a psychiatrist or not. We respectfully suggest that the Court adhere to its plain direction that any such disapproval be done by a psychiatrist; no other person could conceivably be qualified to make such a determination.

5. In further violation of the Court's order of May 30, defendants have provided that mailroom guards can place material from correspondence in prisoners' files even though it does not violate any of the correspondence rules. Defendants propose to authorize placing material in files if a guard thinks it "is relevant to assessment of the inmate's rehabilitation." Their Appendix attempts to justify this serious departure

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1/ Further, although defendants now include a clear and present danger provision, they have omitted from paragraph A(3) their previous limitation to the effect that this determination can only be made at the program administrator or higher level.

from the Court's order by alleging a begign purpose of including "positive" correspondence, and a purpose of including material indicating that the inmate may have a psychiatric disturbance. We submit that the Court should not permit this departure, because mailroom guards should not be authorized to determine what will or will not affect an inmate's "rehabilitation" or indicate "psychiatric disturbance". Reading the mail for these purposes, and building a dossier on the inmate as a result, is clearly inconsistent with everything the Court has said in this case. Accordingly, only the first sentence of paragraph A(4)(c) should be approved.

B. Investigators

1. In violation of the Court's order, which in the Court's explicit language defined paraprofessionals to be "persons regularly employed by the attorney of record to do legal and quasi-legal research on a full-time basis" (Order of May 30, p. 7), defendants require paraprofessionals to be "certified by the State Bar or other equivalent legal professional body." We are aware of no such certification process by the State Bar or by any other equivalent body. If there is none, and defendants have not informed us of any, their provision ingeniously results in barring all paraprofessionals. If there is one, it must comply

with the Court's order. We respectfully urge the Court to adhere to the language of its order.

2. Defendants have eliminated the word "confidential" regarding visits by law students and paraprofessionals on behalf of attorneys. The Court's order including this word was taken from defendants' original version. Defendants have not offered any explanation for dropping this word. It is possible that the later provision that the student or paraprofessional "will be granted the privileges of the attorney" includes confidential communication. But the omission of the word confidential from the earlier provision unnecessarily raises an ambiguity. Clearly, the communications by investigators acting on behalf of attorneys must be confidential. This is in accordance with California Evidence Code 952 and In re Jordan, supra. The Evidence Code defines "confidential communication" to include information communicated to "those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted." This obviously includes investigators communicating with clients on behalf of the attorney or record. We urge the Court not to permit any ambiguity and to adhere to its (and

defendants') original language.

3. As a final departure from the Court's order, regarding the attorney's "responsibility" for investigators, defendants have disregarded the Court's standard of responsibility for "acts taken within the scope of the agency created" (Order of May 30, p. 7). Instead, defendants use the term "in the course of acting on behalf of the attorney." We do not know whether defendants mean something different from the Court. We urge that the Court adhere to its well-considered language in its order of May 30.

CONCLUSION

For the reasons stated, the Court should disapprove the second revision of defendants' regulations and require defendants to adopt and implement regulations explicitly following the Court's directions.

Respectfully submitted,

WILLIAM BENNETT TURNER
Attorney for Plaintiffs

ORIGINAL FILED:
Jul 20 12:17 PM '73

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF CALIFORNIA

ROBERT MARTINEZ and WAYNE EARLEY, et al., Plaintiffs, vs. RAYMOND K. PROCUNIER, et al., Defendants.	Case No. C-71 543 ACW (Three-Judge Court) ORDER APPROVING REGULATIONS AND VACATING STAY

In accordance with this Court's Order of February 2, 1973, defendants have submitted proposed regulations covering the subjects of mail censorship and confidential visits with inmates by investigators on behalf of attorneys. The Court finds that the defendants' second revised proposals, filed July 16, 1973, are constitutional on their face. Accordingly, the inunction heretofore entered by this Court on February 2, 1973, and stayed on March 21, 1973, shall become effective on August 1, 1973. That injunction shall remain in full force and effect until such time as the regulations contained in defendants' second revised proposals are adopted and

fully implemented in all institutions under defendants' jurisdiction.

IT IS SO ORDERED.

Dated: July 20, 1973

/s/ Ben C. Duniway
U. S. Circuit Judge

/s/ Alfonso J. Zirpoli
U. S. District Judge

/s/ Albert C. Wollenberg
U. S. District Judge